



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
November 5, 2014**

**TO:** Mayor and City Council

**FROM:** Jim Jakel, Interim City Manager  
Alan Shear, Assistant City Manager  
Jeff Walter, City Attorney

**SUBJECT:** Project Labor Agreement

**DATE:** October 31, 2014

**RECOMMENDATION:**

Discuss and provide direction to staff.

**BACKGROUND:**

On July 16, 2014, the City Council discussed the issue of the development and use of a Project Labor Agreement (PLA) for the construction of improvements at Waterfront Park. A copy of the staff report and exhibits from July 16 are included as an attachment to this report.

At that meeting, staff was directed to do additional work looking at developing a PLA template that could be used on a broader range of projects, examine specific dollar thresholds and return with additional data as soon as practical.

Since the meeting, staff has met with the labor union representative, gathered substantial background information and had extensive internal discussions. Further, the City Attorney has done a detailed analysis comparing the proposed version of a PLA from organized labor with the existing PLA utilized by Contra Costa County. The analysis is included as an attachment to this report. We are also including a Western City Magazine article that discussed the topic of PLA's.

Some key questions on the development of a PLA for Martinez include the following:

- Should the City as a project owner use a PLA?
- At what dollar thresholds shall the use be triggered?
- Are certain types of projects better for the use of a PLA (such as multi-craft/trades)?
- Should we consider the County version or labor's version or shall we have a Martinez City hybrid?
- Should we set limits on core employee participation in projects?
- What is the appropriate term or duration for PLA's?

These questions and many other details will need to be addressed in the development of a PLA, if that is the Council's determination.

Staff awaits Council direction on the next steps to be taken in this process.

**FISCAL IMPACT:**

Additional staff resources in the study and development process. Unknown at this time, if PLA's are utilized for construction projects.

**ACTION:**

Provide direction to staff on the use of Project Labor Agreements.

Attachments:

- 1) July 16 Staff Report and Attachments
- 2) Minutes from July 16 Council meeting
- 3) City Attorney's Comparison of PLA's
- 4) Western City Magazine article, 2/2012
- 5) Master PLA Proposed by Labor
- 6) County PLA Modified for City of Martinez
- 7) PLA background information from Fairfield, Hayward, Pinole & Watsonville



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
July 16, 2014**

**TO:** Mayor and City Council  
**FROM:** Anna Gwyn Simpson, Interim City Manager  
**SUBJECT:** Project Labor Agreement for the Waterfront Park Improvement Project  
**DATE:** July 10, 2014

**RECOMMENDATION:**

Discuss and provide direction to staff.

**BACKGROUND:**

Project Labor Agreements (PLAs) are collective bargaining agreements negotiated by local trade unions and a project owner, which if pursued in this case would be the City of Martinez. A PLA is a form of pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment on an entire construction project prior to the project being advertised for bid and which becomes part of the bid specifications that winning contractors must follow. A PLA remains in effect for the duration of the project.

PLAs have been in use since the 1930s or earlier and are used in both public and private sector construction projects, most often on large-scale projects employing multiple trades. For public projects, whether or not a particular project operates under a PLA, all competitive bidding and contracting requirements must be met, including projects being awarded to the lowest responsible bidder.

PLAs are allowed, but not required under state and federal regulations. Although PLAs have many complex features, the most significant condition in the majority of PLAs is that the unions agree not to strike or engage in other disruptive activities and the contractors and their subcontractors agree to no lockouts for the duration of the construction project. Opponents of PLAs cite anecdotal data that the agreements may increase the overall cost of the project by 3-5%.

In Martinez, the Waterfront Park Improvement Project is a current large scale project that could include a PLA for the construction phase of the Project.

**FISCAL IMPACT:**

If Council directs staff to develop and negotiate the terms of a Project Labor Agreement on a major construction project, legal costs are estimated at \$5,000 - \$10,000. It is unknown what the impact would be to the overall cost of the construction Project as a result of entering into a PLA.

**ACTION:**

Provide direction to staff on Project Labor Agreements on the Waterfront Park Improvement Project.

Attachments:

EPI Briefing Paper



# EPI BRIEFING PAPER

ECONOMIC POLICY INSTITUTE · AUGUST 11, 2010 · BRIEFING PAPER #274

## BUILDING BETTER A Look at Best Practices for the Design of Project Labor Agreements

BY DALE BELMAN (MICHIGAN STATE UNIVERSITY, SCHOOL OF LABOR AND INDUSTRIAL RELATIONS) AND MATTHEW M. BODAH (UNIVERSITY OF RHODE ISLAND, SCHMIDT LABOR RESEARCH CENTER)

### Executive summary

Project labor agreements (PLAs) are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity. PLAs allow the expeditious resolution of disputes that can arise in the course of the project, thereby helping to ensure that the project is delivered on time and that quality standards are maintained. Recently, PLAs have begun to include provisions that seek to improve conditions on the worksite (e.g., health and safety rules) and provide benefits to the community by including jobs and training opportunities for disadvantaged workers and carve-outs for small or minority-owned businesses.

Although PLAs have been around for years and used on some of the most famous construction projects in American history, their use has become controversial as the nonunion sector of the construction industry has grown and as PLAs have been applied to relatively small projects. Critics argue that PLAs place nonunion contractors at a disadvantage in bidding on projects and raise overall project costs. PLA opponents are particularly critical of the use of PLAs on public projects. They argue that such usage violates the spirit of public bidding statutes by requiring the adherence to collectively bargained terms and conditions of employment as a prerequisite for winning a contract.

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If designed properly, PLAs can help projects meet deadlines by guaranteeing a steady supply of highly skilled labor through the building and construction trades unions' nationwide network of referral systems and by reconciling the various work routines of the many trades. PLAs also help to assure timely completion by keeping projects free from disruptions resulting from local labor disputes, grievances, or jurisdictional issues.

PLAs can improve efficiency and promote innovation by prohibiting restrictive work norms, by improving coordination in work flow, and by supporting experiments in changing the work environment. In addition, many PLAs include highly developed systems of labor/management cooperation.

Language in PLAs can be written to advance important policy goals, such as improving training and recruiting members of disadvantaged communities into high-paying jobs in construction.

Often PLAs, particularly those on large projects, contain sophisticated health and safety provisions, including those that dictate overall safety practices, create safety committees, mandate safety training and safety meetings, and address such matters as drug screening.

While nonunion contractors are the most vocal PLA opponents, many PLAs accommodate nonunion firms by, among other things, prohibiting discrimination in bidding based on union status and allowing nonunion firms to bring at least certain core workers with them to projects. Evidence suggests that, where they have attempted to gain PLA work, nonunion firms have been successful in competing for it.

One successful method that is used in many parts of the country for negotiating PLAs is their development by local labor/management councils. Such groups can use the AFL-CIO Building and Construction Trade Department's model PLA and include language to accommodate local concerns. A local model PLA can then be fashioned on a job-by-job basis to meet the needs of the owners and community groups that might have a stake in a project.

We hope that this report can move the PLA discussion beyond a debate about whether PLAs are good or bad and toward a more constructive discussion regarding how to create PLAs that help deliver better projects for owners, contractors, workers, and communities.

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## **Introduction**

### ***What is a project labor agreement?***

The construction of major projects such as highways, bridges, and power grids entails the careful coordination of large numbers of individual contractors and their workforces, often under demanding time schedules and design specifications. Failure to meet project deadlines or quality standards can be costly to the businesses and agencies involved and to the public at large. Project labor agreements (PLAs) are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity.

The longstanding purpose of PLAs is to resolve expeditiously disputes arising in the course of the project, thereby helping to ensure that the project is delivered on time and that quality standards are maintained. PLAs in more recent years also include provisions that seek to improve conditions on the worksite (e.g., health and safety rules) and provide benefits to the surrounding community (for example, by including jobs and training opportunities for disadvantaged workers).

Two basic design features allow PLAs to meet the twin goals of creating greater uniformity in labor contracts and minimizing disruptions that can occur on major construction projects. First, the typical PLA is negotiated by a local building and construction trades council (BCTC) and a construction management firm with the goal of reconciling the differing provisions found in local labor agreements across the building trades unions. For example, each local union's collective bargaining agreement may have different benefits and premium-pay provisions, different hours-of-work provisions, and different work rules. When many trades are working together on a single project over a long period, it makes sense to reconcile differing contract provisions within a master agreement.

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The second fundamental design feature in PLAs offers the construction user—typically called the owner—assurances that work will be undertaken without disruption and that disputes will be resolved expeditiously without causing delays to project schedules. Accordingly, one provision that is nearly universal in PLAs is that work continues on a project no matter what conflicts arise on the project or off. Therefore, even if a building trade union is on strike in a local area, work on a PLA-covered project continues; disputes on the project itself are handled through labor/management committees and grievance procedures culminating in binding arbitration.

Along with these basic elements, PLAs can contain a variety of provisions relating to health and safety practices, training, recruitment of local workers, and operational issues. They may also include favorable language for owners and contractors on compensation and work rules.

## **History of PLAs**

Although the term is relatively new, PLAs have been around for many years. During World War I, American Federation of Labor President Samuel Gompers and Secretary of War Newton D. Baker agreed that military cantonments would be built under a union pay scale in exchange for the unions giving up a request for a closed shop on such projects (McCartin 1997). During and immediately after World War II, agreements that were particularly popular at atomic energy and space and missile sites provided for uniform shift and overtime rates along with no-strike guarantees (Dunlop 2002). Iconic American projects such as Hoover Dam and the Trans-Alaska Pipeline were built under PLAs.

PLAs continued to be used with little controversy in both the private and public sectors throughout the postwar period—a period during which much of the construction industry was highly unionized. With powerful unions, there was a strong desire on the part of owners and contractors to avoid labor disputes and gain the best economic deal possible relative to local agreements. The climate changed, however, in the 1970s and 1980s, when union market share dropped and construction users and the nonunion sector became better organized (Linder 1999). In the new environment, with large nonunion contractors able to compete for all types of work in most states, and with the growing strength of a nonunion contractors' association—the Associated Builders and Contractors (ABC)—challenges to PLAs became more common. In the past decade, all branches and levels of government have entered the PLA debate (Cockshaw 2003; U.S. Senate 2000).

## **Why are PLAs controversial?**

Because PLAs require that all contractors working on a project adhere to a collective bargaining agreement, even non-union contractors must operate under negotiated rules. These contractors complain that PLAs remove their competitive advantage, require them to use union workers from hiring halls rather than their own employees, and require them to contribute to union-sector health care and pension funds from which their own employees are unlikely to benefit (ABC 2001). Opponents of PLAs argue that they frequently add costs to projects that benefit only the contractors and workers, not the general public.

Private sector owners may place nearly any conditions they like on their projects; even so, private sector PLAs often restrict bidding to unionized contractors. On public projects, however, state and federal bidding statutes and regulations must be followed. Therefore, much of the controversy surrounding PLAs is whether, on government projects, they violate public bidding statutes by placing a condition on successful bidding (i.e., the willingness to sign a PLA) beyond the requirement of being the “lowest qualified bidder.”

As public policy has developed, most courts have held that governments may use PLAs on public projects as long as bidding is open to all qualified bidders (union and nonunion) and due diligence has been done to determine the cost effectiveness of the PLA. On a practical level, this means that the benefits of improved coordination and management offered by the PLA can outweigh any additional costs that might arise from their use. Whether they do depends on the provisions of the PLA and how they are implemented by the parties on the project.

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At the federal level, PLAs have been something of a political football. Their use was prohibited on federally funded projects at the end of George H.W. Bush's administration, encouraged during the Clinton administration, essentially prohibited during George W. Bush's administration, and, again, encouraged under the Obama administration (see Executive Order 13502, February 6, 2009). Federal regulations pursuant to the implementation of President Obama's executive order appeared in the Federal Register on April 13, 2010.<sup>1</sup> As evidence of how contentious the issue of PLAs can be, the public comment period on the federal regulations in the fall of 2009 yielded nearly 700 responses, pro and con.

### ***The purpose of this report***

Passions in the PLA debate often eclipse reason. But PLAs should be viewed for precisely what they are: a tool to provide value on construction projects. Because PLAs have many elements, and differ considerably in terms of which elements are used and how they are carried out in practice, an agreement's success at adding value is dependent on design choices and how its provisions are implemented during the project. This report focuses on best practices that have helped parties make the most of their agreements. Accordingly, rather than rehashing the PLA debate, we offer advice on such matters as assuring timely projects, maximizing efficiency and innovation, supporting community development, improving health and safety, resolving disputes, accommodating nonunion contractors, and negotiating PLAs. We hope this report can be used by parties to craft better PLAs and achieve success on their construction projects.

### **The construction industry**

For convenience we speak of the construction industry, but construction comprises several distinct industries and is organized around occupations rather than employers. Construction projects are temporary, as are most construction jobs. Craft workers and professional employees in the industry move between employers to remain employed, and these continual transitions result in a weak attachment between employers and employees. Demand for construction and, therefore, construction workers is cyclical. In addition, immigrants, as historically has been the case, make up a large and increasing part of the construction labor force. In this section, we will discuss each of these characteristics of the industry.

Even though the construction sector is devoted to building things—except, of course, for those segments that specialize in tearing things down—there are marked differences in the work, technology, financing, and labor forces between industries. Perhaps the most obvious difference is between residential and all other construction. Residential construction firms are typically small, operate in markets with vigorous price competition, and employ workers with less training and fewer skills. But there are also meaningful differences between other parts of construction. For example, highway construction depends on public works expenditures, industrial construction is driven by demand for manufacturers' products, and large commercial projects require capital from banks and outside investors.

The occupational structure of work and the occupational structuring of firms distinguishes construction from other industries. Construction workers are defined by their occupation more so than by their employers. Skill development is specific to a trade—electricians do not have the skills to do the work of carpenters or pipefitters—and once workers have acquired substantial skills within a trade they usually remain in that trade. Moreover, most firms are occupationally structured. They provide a specific type of service, such as electrical contracting, plumbing, pipefitting, painting, or roofing. Even general contractors seldom employ more than the basic trades—for example, carpenters, ironworkers, laborers, operating engineers, and bricklayers—and may obtain even these workers by subcontracting with specialty employers. The occupational structure of construction makes skill development central to the success and efficiency of the industry and supports the easy movement of employees between employers.

Construction is unique among the goods-producing industries in being dominated by small employers and establishments. Although there are well-known large employers such as the Bechtel Group, Bovis Lend Lease, Skanska, and KBR, to name a few, only 15% of all construction workers are employed by contractors with 250 or more employees—about

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a quarter (24.4%) work in firms with nine or fewer employees—and of the 710,307 establishments in the construction industry only 163 have 1,000 or more employees (U.S. Census Bureau 2005). The small number of employees in most firms is due to workers being specialized not only by trade but by type of work. Hence, an electrician, for example, may work for a firm that specializes in residential work or industrial work or in the installation on lighting on highways. Except for the very largest firms, construction employers typically operate in local or, at most, regional markets.

Construction projects are inherently temporary. Consequently, a contractor's volume of work and the number of employees it needs vary considerably over time. The workforce has to be mobile between projects, and often between employers. Historically, building trades unions have served as labor market intermediaries that provide a clearinghouse for labor to contractors and serve as a guarantor of the skills of the workforce and conditions for craft workers. In conjunction with signatory (i.e., unionized) employers and their associations, the unions provide training and health and welfare benefits to a mobile labor force. At the same time, however, workforce mobility makes relations between the unions and the employers less stable than in other industries.

The complexities created by the small size of construction employers and the transient nature of construction projects are compounded by the multifaceted organization of construction projects. That is, no single company builds a project. Rather, parts of every project are subcontracted out to firms that specialize in the type of construction needed. A building construction project is likely to involve site preparation, foundations, framing, roofing, electrical work, plumbing, heating and cooling, drywalling, painting, and flooring. In many cases, some or all of these tasks will be contracted to subspecialty firms. As a result, many employers and craft workers will operate—or need to operate—on the same site at the same time. Coordination of multiple contractors is a critical and challenging task, one which, if poorly done, will have negative effects on timeliness and quality. Successful coordination of multiple employers and trades is the hallmark of good projects. However, successful coordination of projects has been complicated during the past several decades as general contracting firms have evolved into construction management firms. Historically, general contractors took overall responsibility for successful completion of a project, and they assumed the financial risks and rewards of that responsibility. In contrast, construction managers serve the owner by coordinating and overseeing the contractors and subcontractors, but they do not take on financial risk if a project goes poorly. The shift from the general contracting to the construction management model complicates lines of authority and incentives.<sup>2</sup> Whatever the management structure of a project, the fundamental complexity of the construction worksite makes coordination across trades and contractors important to the project's success.

The decline of union representation in the construction industry over the past 40 years coincides with an increase in issues related to worker training and a shortage of skilled craft workers. Training highly skilled craft workers requires multi-year programs that combine classroom training and on-the-job experience. In the past, much of the training of construction workers took place in apprenticeship programs overseen by joint labor/management committees. These programs were financed by contractually mandated employer contributions determined by the number of hours worked by a trade. The joint governance structure proved to be effective in providing broad skills training economically. With the large-scale shift to nonunion employment, the apprenticeship system has declined. The lack of large-scale training systems in the nonunion sector was not an issue for many years because many of its workers had been trained in joint apprenticeship programs. Over the past 20 years, however, the lack of effective training systems in the nonunion sector has increasingly affected the ability to deliver high-quality projects. Thus, training has become an issue for construction stakeholders.<sup>3</sup>

Because the construction industry is very sensitive to demand conditions and changes in interest rates, construction workers face higher and more volatile unemployment than workers in the balance of the economy. For example, the nation's overall annual unemployment rate ranged from 4% to 6% between 2000 and 2007, while the rate in the construction industry was 6.2% to 9.3%.<sup>4</sup> Monthly rates show even greater variability. The average difference in the high and low monthly unemployment rate in these years was only 1.05% for unemployment overall, while the figure

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for the construction industry was 5.88%, or over five times higher.<sup>5</sup> Another example can be found in recent unemployment rates. While the national unemployment rate was 9.5% in June 2010, the unemployment rate in construction was 20.1%.<sup>6</sup>

Construction has been and continues to be a port of entry into the labor force for immigrant workers. Just as large numbers of immigrants from Ireland, Italy, and Central Europe once entered construction soon after entering the United States, construction has more recently served as an important source of employment for new immigrants from Central and South America. Research by the Pew Hispanic Center found that, in 2006, 75% of Hispanics employed in construction were foreign born. Between 2003 and 2006, Hispanic employment in construction rose from 11% to 15% of total employment and provided 40% of the increase in employment among Hispanics during that period (Pew Hispanic Center 2006). The influx of immigrant labor provided an important support for the housing boom of the early 2000s, but may have exacerbated problems with earnings and employment conditions, particularly in residential construction.<sup>7</sup>

Understanding these distinctive characteristics of construction helps us to understand why and how PLAs can be used to deal with complexity on large projects of long duration. PLAs can control some of the uncertainty in an otherwise diverse and decentralized industry.

## **Designing PLAs to meet project deadlines and quality standards**

PLAs can be an effective tool for ensuring that projects are completed on time. Delays create inconveniences and costs for everyone. The school that is not ready for the first day of the new year may force the use of temporary and overcrowded facilities and necessitate a mid-year move. The highway that is not completed on time continues to cause travel problems for commuters and truckers, which result in real costs to a local economy. The factory that is not finished cannot produce revenue for its owners. Moreover, project delays impose additional costs for borrowers and are often the root causes of construction litigation.

Delays in construction projects are not unusual and have many sources. Sometimes, they are related to inadequate numbers of available and appropriately skilled workers. They may also be caused by weather, by materials being lost on the site or arriving late, by problems associated with financing or insufficient planning, or by the unavailability of contractors at the time when their services are needed. Although no one project may suffer delays from all of these sources, delays are common in construction, and timely completion of a project often requires adjustments to work schedules and labor requirements to bring it back on schedule.

Interviews we have conducted with more than one hundred individuals involved in various aspects of construction—e.g., owners, contractors, contractors' association staff, and union officials—on scores of projects<sup>8</sup> reveal broad satisfaction with the ability of PLAs to assure timely completion. Where delays were experienced, they were usually unrelated to labor issues.<sup>9</sup> In fact, the anecdotal evidence suggests that some projects would have experienced schedule delays were it not for the interventions made possible in the PLA.<sup>10</sup> For example, there were instances in which remaining on schedule required bringing in out-of-area workers at critical points in projects. Absent the local unions' commitment in the PLA to providing labor on a timely basis, it is likely that the local unions would have been far less willing to give up work for their members.

PLAs act to improve timeliness through several mechanisms. First, all PLAs include provisions that commit the local unions to provide labor on a timely basis, usually within 48 hours. This commitment is supported by arrangements between union locals to facilitate the movement of skilled labor to areas of labor shortage. Second, most PLAs proscribe work disruptions—strikes, slowdowns, wobbles, and other labor actions—and provide mechanisms by which disputes can be anticipated and peacefully resolved. The presence of these bans, and the provision of dispute resolution mechanisms, supports timeliness both by removing many of the causes of disruptions and by emphasizing the importance of timeliness to all project stakeholders. Third, many PLAs include provisions to harmonize work time and promote the

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efficient utilization of labor, thereby improving project performance. Finally, obtaining the commitment of all of the stakeholders—owners, contractors, union officials, and workers—through a PLA supports an understanding of the requirements of the project and encourages a positive identification with the ends of the project, including getting the job done on time.

### ***Commitment to the timely provision of skilled workers***

PLAs can include provisions that commit local unions to actions and practices that allow contractors to operate efficiently and with the confidence that there will be access to the workers required for the project. The quid pro quo for using local unions as an initial source for skilled workers is that union locals agree to provide the labor needed for a project quickly, usually within 24 to 48 hours. By way of example, the Tappan Zee Bridge, which spans the Hudson River just north of New York City, was upgraded using a PLA that included a commitment that unions provide labor on a timely basis:

The Contractors agree to hire on the Project craft employees covered by this Agreement through the job referral systems and hiring halls established in the Local Unions' area collective bargaining agreements....In the event that a Local Union is unable to fill any request for qualified employees within a 48 hour period after such requisition is made by the Contractor (Saturdays, Sundays and holidays excepted), the Contractor may employ applicants from any other available source.

Similar language can be found in almost all PLAs. Such language commits unions to make available skilled workers quickly, and allows contractors to seek alternative sources of labor if the unions cannot provide it, allows better coordination of project workforces, bans job actions, and provides for immediate means of dispute resolution.

### ***Recruitment of workers from outside the region***

The agreement with the local unions does more than provide access to local craft workers. Local unions have arrangements through their international parent organizations to allow for union members from other locals to work on a project when the local labor force is insufficient. With adequate notice, even large projects can recruit a labor force of workers with established employment records from around the nation. The arrangement the locals have with their internationals has proven important for large projects, especially projects in regions with low population density. For example, the construction of the General Motors assembly plant in Lansing, Mich. in the early 2000s was not hampered by the extremely tight labor markets of the time because appropriately skilled labor could be drawn from the Midwest and, if necessary, from other regions of the country. In contrast, trade publications reported numerous delays and price escalation on large construction projects in the years leading up to and during this project.<sup>11</sup>

### ***Ban on job actions***

The complex organization of work and responsibilities on construction sites create considerable potential for misunderstandings and disagreements concerning the “ownership” of work and how the work is to be accomplished. Since construction sites are temporary workplaces, contractors and workers constantly have to determine how to work together to produce a successful project. Unlike a permanent workplace, where issues of who is supposed to do what have been spelled out, in construction these matters often must be resolved anew on each site. The inherent lack of organization on construction sites becomes more complex due to the uncertain lines of authority, particularly on sites overseen by a construction manager. Problems arise frequently because construction plans are often incomplete when projects are bid by contractors. Consequently, many of the details of the work, deliverables, and cost are determined once the project has begun, and decisions have to be made expeditiously so as not to delay work. Therefore, the details of the contract and subsequent decisions are often made onsite, a pressure adding to an already complex situation.

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The assignment of work is a frequent source of dispute between contractors and between workers on both union and nonunion sites. In some instances, parties try to claim the work; in others they try to avoid it. On union projects, disagreements over the ownership of work are usually jurisdictional disputes—that is, a disagreement between unions over which union’s members should do the work. These disputes may arise when mid-project changes occur or when changing technology blurs craft lines. Despite conventional wisdom, delays about who should do what are not unique to the union sector. Nonunion worksites can also suffer delays when contractors do not agree on the scope of their work.

Work can also be disrupted by labor disputes. On union sites, work can slow or stop due to contract negotiations, disputes over jurisdiction between trades, safety disagreements, or other issues. Nonunion worksites can also be affected by slowdowns, walk-offs, excessive absenteeism, and other labor problems when employees and contractors are in conflict. For institutional reasons, disputes on union sites are more visible, but disputes between contractors and workers on both union and nonunion sites can seriously impede work.

The no-strike/no-lockout language and the dispute resolution processes (discussed more fully in a later section) provided in PLAs have proven to be highly effective in preventing disruptions on union worksites. The dispute resolution provisions of most PLAs (1) provide an expeditious means to resolve any strike or work slowdown, (2) commit union leaders and contractors to take immediate action to resolve the problem and resume work, and (3) impose large and rapidly increasing penalties when strikes or slowdowns occur. The success of PLAs in addressing work disruption issues is demonstrated by the very small number of work stoppages and slowdowns on projects built under PLAs.<sup>12</sup> However, if work disruptions occur, then the disputes are resolved rapidly and prior to serious the consequences that could result. For example, a wildcat work stoppage at the San Francisco Airport in May 1999 under other circumstances might have lasted much longer, but the dispute was resolved in less than 24 hours due to the union leaderships’ commitment under a PLA.<sup>13</sup> Although the occurrence of any stoppage might be viewed as a failure, the success in quickly ending the work stoppage was only possible because of the PLA.

### ***Language to foster efficiency and reduce time to completion***

PLAs promote practices that increase project efficiency and may shorten time to completion. One important practice is the harmonization of working hours. For historic reasons, different trades may have different rules about starting times, the number of holidays and the dates when holidays are taken, allowable shift schedules, breaks, and methods of determining overtime. This can result in situations in which carpenters start and end their shifts an hour after electricians, or pipefitters take a day off on Friday when a holiday falls on a weekend while other trades take the day off on Monday.<sup>14</sup> Because of the need for coordination between trades, such differences result in inefficient use of time and/or an excessive use of overtime. By coordinating starting times, holidays, and other work rules, PLAs can improve efficiency, as well as reduce project times and cost.<sup>15</sup>

Another important practice is the creation of labor/management committees to oversee projects and anticipate problems before they occur. For example, many PLAs now include language on pre-job conferences, which permit the parties to discuss issues and resolve them ahead of time rather than wait for them to come up during a project. Determining whether ironworkers or millwrights will do a particular task can be determined at the outset, avoiding any delay that might occur if the decision is left until the start of the task. Similarly, as information about unanticipated problems becomes available, the committees can review the problem and find a solution on the front end to avert delays.

The success of PLAs depends, in part, on craft workers, union officials, and contractors’ identification of the project as one in which each participant has a role in making a success. In the course of our interviews, we frequently heard that stakeholders’ identification with PLA projects and their investment in the success of the project underlie easier dispute resolution. Jurisdictional issues that might have been fought out at length on other projects were ceded because the

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parties wanted the project to move forward without impediment. Labor leaders also indicated that they expected reciprocity on the next PLA; if the Carpenters Union gave up work on this PLA, the Laborers Union would give up work on the next one. Often times, the parties preferred that issues be resolved without the involvement of the project owner. Toward this end, issues were resolved at the lowest level possible.<sup>16</sup>

Most PLAs are negotiated locally. Local negotiation plays an important role in creating understanding and identification with a project on the part of the local union representatives and membership. There are, however, national agreements, such as the Toyota PLA. Although the content of these national agreements is similar across projects, local building trades councils are part of negotiations between the owner and the AFL-CIO's Building and Construction Trades Department. This involvement assures that the members of the local council, who will be signatory to the agreement, understand the agreement and the gains and responsibilities it confers. Local involvement can also play a critical role in adapting the agreement to local laws and conditions. This suggests that, even if the content of PLAs were standardized into sets of alternative language, the discussion, revision, and joint agreement on the language is important to creating the conditions needed for the agreement to be fully successful.

The effectiveness of PLAs in delivering projects on time is due, then, not only to the provisions of the PLA but also to the identification of contractors, union leaders, and workers with the project and its success. The importance of local engagement surfaced numerous times during our interviews with individuals involved in PLAs. When this identification occurs, those involved in the project will seek ways of making the PLA work and often develop informal means of assuring success.

### ***A case example of a 'close success'***

On-time completion of a project may require union leaders' active involvement to assure that labor is available when it is needed and that local disputes do not affect work. In most cases, PLAs commit contractors to using members of the local unions that are signatory to the agreement, but they also commit the unions to provide appropriately skilled labor quickly, most often within 48 hours. In addition, the PLAs specify the actions contractors may take when labor is not available. The standard language allows the contractor to hire from any union local that has members available or, in some cases, any other source at all.

A challenge that the building trades can face is assuring that the timeline of the project is not disrupted by local labor issues. Although PLAs are written so that work is not affected by work stoppages consequent to local bargaining, putting this concept into effect can be difficult. Maintaining the contracted work schedule during periods of tension between employers and the trades can challenge the skills and competing responsibilities of local union leaders and employers.

Much of the large-scale construction work in Minneapolis, Minn. is done under PLAs. The professional construction staff of the municipal airport reports that it builds only under PLAs because the agreements mean it can count on timely completion of the work. This is an important consideration for airlines, which build their flight schedules around the facilities' expected completion date.<sup>17</sup>

In the late 1990s, circumstances converged to test the ability of a PLA to assure on-time completion of a major project at the Minneapolis Airport. Construction labor markets were extremely tight in the latter 1990s, and large projects in the Minneapolis area required bringing in "travelers," or workers from locals in other parts of the country.<sup>18</sup> The tight labor market also encouraged jockeying between trades in their negotiations over wages and benefits. The electricians had won a favorable agreement from their contractors, and the members of the pipe trades believed they should do as well, if not better, in their negotiations. The negotiations over a new agreement were difficult, and a seven-week strike took place prior to the final settlement of a new agreement.

Work continued on PLA projects as required by the agreement. However, it slowed as travelers—at the first hint of labor troubles—left the area. Since work was continuing on a number of PLA-covered projects, the loss of the travelers left the local unions struggling to staff jobs, including the airport project.<sup>19</sup> The owner and contractors were, in the end, able to

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find sufficient labor by shifting labor from less urgent work to the project. The situation was burdensome and was viewed by the airport authority as not in keeping with the commitments made by the PLA. There were concerns on the part of owner representatives that the local union leadership used the slowdown on the PLA work as leverage in bargaining.

Not surprisingly, these problems drove changes in construction labor relations in the city. Because this “close success” left construction stakeholders, such as the airport authority, vocally dissatisfied with the events around the contract negotiations, the local union and employer association agreed that, in future negotiations, they would submit disputes in negotiations to a joint dispute resolution procedure rather than strike. As a result, relations have improved.

A suggestion that emerged from the airport construction situation was the need for greater involvement by local union officials in the negotiation and implementation of PLAs. The airport construction staff says that in some instances the local union officials with whom they worked were not the same officials who crafted the PLAs, and there was a lack of understanding with regard to the role of the local union and its responsibility to keep the project running smoothly. Subsequently, discussions with local union officials were successful in soliciting greater support for the efficient management of the PLA.

### **Summary**

It is reasonable to conclude that PLAs are most successful, in part, when local union officials and members understand and support the goals of the PLA. Moreover, the union and its members must understand their responsibility as a party to the PLA. The argument is not that national PLAs cannot be successful; rather, it is that local officials need to be involved in the implementation of the national templates. Local engagement is central to gaining the support of the officials who will implement the PLA and to ensuring workers’ identification with the project.<sup>20</sup>

## **Designing PLAs to improve efficiency and encourage innovation**

Due to its complexity, temporary nature, and turbulence, the construction industry faces particularly difficult challenges in productivity improvement and in innovation, including the development of new technologies and the introduction of new work practices. These issues appear regularly in professional journals and books on construction.<sup>21</sup> PLAs can be an effective tool for improving productivity and supporting innovation in organization and work structures. The most immediate improvements are provided in provisions concerning the harmonization of work rules between trades, a move that increases efficiency while reducing costs, and provisions that require jurisdictional issues to be addressed prior to the start of a project. PLAs can also be used to experiment with work rule changes, such as minimum staffing requirements or limitations on the use of particular tools and technology.

### **PLA provisions that change work practices**

Each construction trade has work practices that have evolved independently over long periods of time. In the unionized sector, practices such as starting time are usually part of the collective bargaining agreement, but they are most likely based on established past practices. Among nonunion contractors, historic work practices are the unwritten “customs of the trade.” Problems and subsequent inefficiencies may arise because of differences between trades. For example, electricians may start work at 7 a.m., while carpenters start at 8 a.m. Pipefitters may have ten holidays, electricians nine, and carpenters eleven. In each situation, the lack of coordination between the trades can create inefficiencies.

PLAs often include provisions to harmonize working hours, workdays, holidays, and starting times across trades. Sections from a New York PLA provide basic language for the harmonization of hours:

#### **SECTION 1. WORK WEEK AND WORK DAY**

Eight (8) hours shall constitute a normal workday’s work between the hours of 8:00 am and 4:30 pm (with a half hour unpaid lunch break), five days a week, Monday through Friday. The Construction Manager can elect to work the first shift beginning at 7:00 am through 3:30 pm.

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#### SECTION 4. HOLIDAYS

A. Schedule—There shall be 8 recognized holidays on the Project:

New Years Day  
Labor Day  
Presidents Day  
Veterans Day  
Memorial Day  
Thanksgiving Day  
Fourth of July  
Christmas Day

All said holidays shall be observed on the dates designated by New York State Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on Sunday shall be observed on the following Monday.

B. Payment—Regular holiday pay, if any, and/or premium pay for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity—No holidays other than those listed in Section 4-A above shall be neither recognized nor observed.

Collectively bargained work rules may not be well-suited to some projects. In such instances, PLAs can be used to change local rules. For example, a local agreement that does not permit a second shift to be scheduled without a first shift may not fit a school project that requires all work to be done after the school day. Similarly, considerable highway work now takes place at night.

Language to accommodate the multiplicity of needs on construction projects can be found in a number of PLAs. The Mt. Vernon (N.Y.) School District PLA states:

The parties agree that it may be necessary to perform rehabilitation work during periods when school is in session. In that case, the Local Unions agree that the first shift may begin at 4:00 pm and end at 12:30 am (With a ½ hours unpaid lunch period) each day, Monday through Friday.

In some instances, arranging the work week as four 10-hour shifts has advantages over the more traditional eight hours a day, five days a week. PLAs can be used to set aside premium payments required for working more than eight hours a day. A New Jersey PLA states:

(2) Four Day Work Week: Monday-Thursday; four (4) days per week, ten (10) hours per day plus one-half hour unpaid lunch period each day. The establishment of a four-day workweek will require the prior consent of the Union(s), which represents the affected employees, such consent not to be unreasonably withheld.

Formal and informal work rules exist in all workplaces, construction included. A classic example from construction is bricklayers' informal limitation on the maximum number of bricks laid during a shift. Formal rules may include fixed times for coffee breaks and a minimum number of workers on crews. PLAs can incorporate language that explicitly sets aside particular rules. Because the PLAs are negotiated by union officials and provide gains for workers, provisions for eliminating restrictive practices and work rules are more likely to be effective than unilateral orders to cease such practices. Additional examples of existing PLAs are instructive in the flexibility they offer in the formulation of language that reflects the real conditions of the particular project. An Indiana PLA states:

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**Section 1.** There shall be no limit on production by workers nor restrictions on the full use of tools and equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

**Section 7.** The Union will not impose conditions, which limit or restrict production or limit or restrict the joint or individual working efforts of employees. The Construction Contractor may utilize any method or technique of construction, and there shall be no limitation or restriction regardless of source or location of machinery, pre-cast tools, or other labor-saving devices, nor shall there be any limitation upon choice of materials and design.

The Toyota PLA for San Antonio, Texas states:

**Section 1.** There shall be no limit on production by workers nor restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

The Harvard University PLA initially negotiated by the former U.S. Secretary of Labor John Dunlop is particularly thorough in addressing practices and rules that might reduce project efficiency:

**Section 1.** No rules, customs, or practices, which limit or restrict productivity or efficiency of the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction consistent with the Contractor's agreement(s) with the Owner.

**Section 2.** Except as otherwise expressly stated in this Agreement and in the Project Contractor's agreement with the Owner, there shall be no limitation or restriction upon the Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. The Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment or facilities.

**Section 3.** It is recognized that the use of new technology, equipment, machinery, tools and/or labor-saving devices and methods of performing work will be initiated by the Contractor from time to time during the Projects. The Unions agree that they will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Unions concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Unions shall have the right to grieve and/or arbitrate the dispute as set forth in Article VII of this Agreement.

### ***Using PLAs to improve project coordination***

There have been great advances in organizational structure in much of the economy over the last 30 years. This is particularly evident in manufacturing, where experiments with socio-technical systems and lean manufacturing have resulted in large changes in work and authority structures. While enumerating these approaches is beyond the scope of this paper,

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some of the most important changes have involved the flattening of organizational structures and the greater integration of blue-collar workers in controlling production and decision making about production. These changes have yet to move into construction.

Despite the well-understood challenges and failures of current project management practices—challenges that arise from the organizational and task complexity of construction projects, coupled with a top-down decision structure—there has been little or no change in authority and decision-making structure of construction over decades. The lack of change in the face of these challenges reflects not only a comfort with traditional practices, but also a lack of resources needed to support experimentation of the type undertaken by the larger and better-financed manufacturing sector.

An important element in improving construction work practices is increased involvement of those engaged in the project. The central role of daily labor/management meetings that resulted in reduced injuries in the demolition of the World Trade Center in 2001 and 2002 is one example of the importance of engagement in construction projects. In addition, the use of joint labor/management meetings before the start of a project to resolve jurisdictional issues and consider specific problems are often cited by contractors and union officials as important to the smooth completion of a project because they lead to the prompt resolution of problems.

For example, the Illowa Construction Labor and Management Council (of Illinois and Iowa) has adopted an approach in which it is actively engaged throughout each construction project. If there is a labor issue on a project, the first person to be called is the executive director of the committee. The executive director hears the parties and makes a suggestion about how a dispute might be resolved. If the parties are dissatisfied with the suggested resolution, predesignated representatives are called to the site to hear the issue. This team is empowered to make a binding decision and, after hearing the parties, usually fashions a solution without having to impose a decision. The result of this process is that the owner of the project seldom needs to become involved in disputes. As a result of these outcomes, some PLAs include language establishing ongoing labor/management committees or mandating their role in the construction process at specific times. For instance, Section 8 of the Tappan Zee Bridge (N.Y.) PLA requires:

#### **Section 1. SUBJECTS**

The Project Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interests; 4) discuss matters relating to manning and scheduling with safety and productivity as considerations; and 5) review Affirmative Action and equal opportunity matters pertaining to the Project.

#### **Section 2. COMPOSITION**

The Committee shall be jointly chaired by designees of the President of the NYS Council and the Construction Project Manager, and shall include representatives of the Local Unions and Contractors involved in the issues being discussed. The Committee may conduct business through mutually agreed sub-committees.

The Harvard PLA requires a pre-job conference to address, among other issues, work assignments:

(a) The Contractor with responsibility for the performance and installation of the work shall make the specific assignment of the work, which is included in its contract, (the “Responsible Contractor”). All work assignments shall be disclosed by the Responsible Contractor (or the Project Contractor, or the responsible Contractor’s General Contractor) at a pre-job conference held in accordance with industry practice. Responsible Contractors shall notify the Project Contractor and the affected Unions of the assignment before starting work to be

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performed under this Agreement. The Plan for the Settlement of Jurisdictional Disputes in the Construction industry currently in effect, or its successor, shall serve as a guide for establishing jurisdiction at such meetings. Such assignment shall not be changed absent the written agreement of all parties to any dispute arising over such assignment, (including the Responsible Contractor), or pursuant to a decision issued by a permanent arbitrator appointed under this Agreement to hear and decide jurisdictional disputes. Should there be any formal jurisdictional dispute raised, the Project Contractor shall be promptly notified.

### ***Using PLAs to experiment with change***

As previously noted, workplaces and workers are governed by a combination of formal and informal rules. The workplace rules developed over time represent the employers and employees' interests in establishing standards of performance. The employees' desire is to create a work environment that is livable and predictable. As the formal and informal rules of the workplace are important to employees, the rules take on a life of their own.

PLAs are temporary agreements, and so they can be used to experiment with altering work rules and allow the workforce to determine how important or unimportant particular rules are. For example, it has been common practice to have project-wide morning and afternoon breaks timed to the arrival of a food and beverage wagon. Because of the time needed for workers to get to the wagon, wait for service, and get back to their work locations, scheduled breaks can reduce working time and productivity. Therefore, some PLAs explicitly eliminate scheduled breaks. Workers still have break time, and may bring food and beverages for the break to their work location, but working time is increased by eliminating the walk to and from a canteen truck and the wait in line.

In creating opportunities to work under different rules, with the assurance that the traditional rules will be maintained as a general framework, PLAs provide experience with alternative work rules. This can result in both improved productivity on the PLA project and, simultaneously, the experience needed to see if taken-for-granted norms are still valued by the workforce and essential to a labor/management relationship.

### ***Using PLAs to change work rules***

The discussion and examples of the development of PLA language that has been used to address pay adjustments, harmonization of conditions across trades, and work rule changes reveal four basic categories and reasons for the changes:

- requisite adjustment of the rules to fit a project,
- harmonization of the rules across trades to increase efficiency,
- elimination of rules that may reduce efficiency, or
- changes in compensation such as overtime rates or standards for overtime pay.

Many of the rule changes improve efficiency and reduce costs with little effect on pay or work load. Consequently, although the harmonization of rules benefits some trades while disadvantaging others, the net effect is generally neutral.

The question is, then, why would a particular union sign a PLA that may eliminate positions or reduce pay? One possibility is the quid pro quo for long-term employment on a large project. Just as permanently employed construction maintenance workers, such as those employed by universities, accept lower pay, craft workers on large construction projects who are employed for longer periods of time than those on shorter duration construction projects may also accept lower pay. In recognition of this, some unions may sign PLAs that ease some work rules or reduce premium pay. Likewise, easing the rules to provide cost reductions may induce owners to use a PLA. For a sufficiently large PLA, on balance, the large gains in hours of work justify such concessions.

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## **Summary**

Construction projects are complex undertakings that require a high degree of coordination between multiple trades, prime contractors and subcontractors, and managers and owners. Changes in the organization of construction, such as the movement from general contractors to construction managers, increase the challenge to provide successful coordination. PLAs can be used to improve organizational structures and to improve the efficiency of construction projects while lowering injury rates by harmonizing work rules across trades and adapting work rules to the needs of a project. In addition, by mandating activities such as pre-job conferences and regular meetings between the contractors and union representatives, cross-trade coordination can be improved and work issues can be resolved before they affect construction operations.

## **Designing PLAs to support communities**

Governments and private organizations have struggled for more than a century to allow people from disadvantaged backgrounds to move into decent jobs. The federal Manpower programs of the 1960s, the Comprehensive Employment and Training Act programs of the 1970s and 1980s, and others have achieved only partial success. A critical ingredient missing in many of these programs has been the availability of regular employment for trainees. Both private and public training programs have trained people for occupations that did not have the capacity to absorb all new trainees or did not provide the linkages needed to move trainees into private employment.<sup>22</sup>

During the past 15 years, public PLAs have been used to create structures for moving individuals from disadvantaged populations into the construction labor force. Today, a number of PLAs are referred to as Community Workforce Agreements, since they explicitly attempt to engage local populations in PLA-covered projects. Because the construction projects for which PLAs are written tend to be large multiyear projects, they provide the connection between training and employment absent from many training programs. The success of community workforce investment PLAs on West Coast ports has encouraged the incorporation of provisions for social investment into a number of PLAs with public bodies such as the City of Los Angeles and its school district.

The scope and complexity of the community workforce provisions of PLAs varies with the size and duration of construction projects. Even small projects can support training through provisions requiring minimum ratios of apprentices to journeymen and setting aside limits on these ratios in collective bargaining agreements. Larger and longer projects can incorporate more elaborate structures. They can target areas with large disadvantaged populations, improving these populations' ability to qualify for apprenticeship training through pre-apprenticeship programs, requiring that a minimum number of apprentices and workers on the project be drawn from the targeted areas, and providing community involvement in the training and employment process. PLAs may also encourage minority and other small business utilization by exempting them from the provisions of the PLAs and including provisions to encourage them to participate in projects. PLAs used for school construction have engaged high school students and have increased their opportunities to enter apprenticeship programs.

## **Using PLAs for social investment**

PLAs vary substantially in the purpose and sophistication of training provided. Even relatively simple PLAs may address training opportunities by setting aside work for apprentices and other trainees. For example, an Indiana PLA stated that apprentices and non-journeymen may make up "up to forty percent (40%) of a craft's workforce...unless the local collective bargaining agreement establishes a higher percentage." The more elaborate training systems, incorporating the full array of elements (discussed below) for bringing the disadvantaged into the workforce, are found on large public projects. The most extensive of these are related to port construction on the West Coast. The ports of Los Angeles/Long Beach, Oakland, and Seattle each provide extensive systems for social investment through PLAs.

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A review of the literature on construction training for those from disadvantaged backgrounds suggests that six elements are needed for success: (1) a pre-apprenticeship program, which provides foundation skills and screens enrollees for their ability to handle the demands of construction; (2) a link from the pre-apprenticeship program to apprenticeship opportunities that provides reasonable assurance that those who complete the pre-apprenticeship program successfully will be enrolled in apprenticeships; (3) sufficient apprentice work opportunities so that those who are enrolled in the apprenticeship programs will complete those programs in a reasonable time; (4) continuing work opportunities that allow apprentices to readily move into journeyman status and move forward with their work lives; (5) oversight by representatives of stakeholders in the training and the project and the development of institutions that allow issues to be resolved without disrupting the training (stakeholders include the community from which the target population is drawn, the employers and locals that are party to the PLA, and the owner); and (6) development of close working relationships from the beginning between community groups and advocates and local building trades unions and councils in the development, crafting, implementation, and ongoing evaluation of these efforts.

These elements are not always easy for the stakeholders in such programs to agree to. Items 2 and 5 can be sensitive for the labor and contractor parties to PLAs, as these create additional oversight for apprenticeship programs. The final item, development of close working relationships between community groups and local building trades, is particularly important to the success of these projects. Conflict between the trades and community groups has occurred when members of communities have viewed the unions as standing between them and good jobs. Similarly, unions and contractors have viewed community groups as naïve about the requirements of construction. Early and ongoing communication between local union leadership, contract associations, and community groups is important to the success of these efforts. Communication is necessary to promote the understanding needed to resolve the differences between the perspectives of the two parties and to fashion workable solutions to the difficulties involved in moving disadvantaged groups into better jobs while protecting established work and skill standards.

### ***A case study: the Port of Oakland PLA***

The incorporation of social investment language into the Port of Oakland PLA during the negotiation of the agreement in 1999 reflects the previously limited success in bringing less-advantaged populations and minority-owned businesses into several large-scale, public construction programs (Sloan et al. 2001).

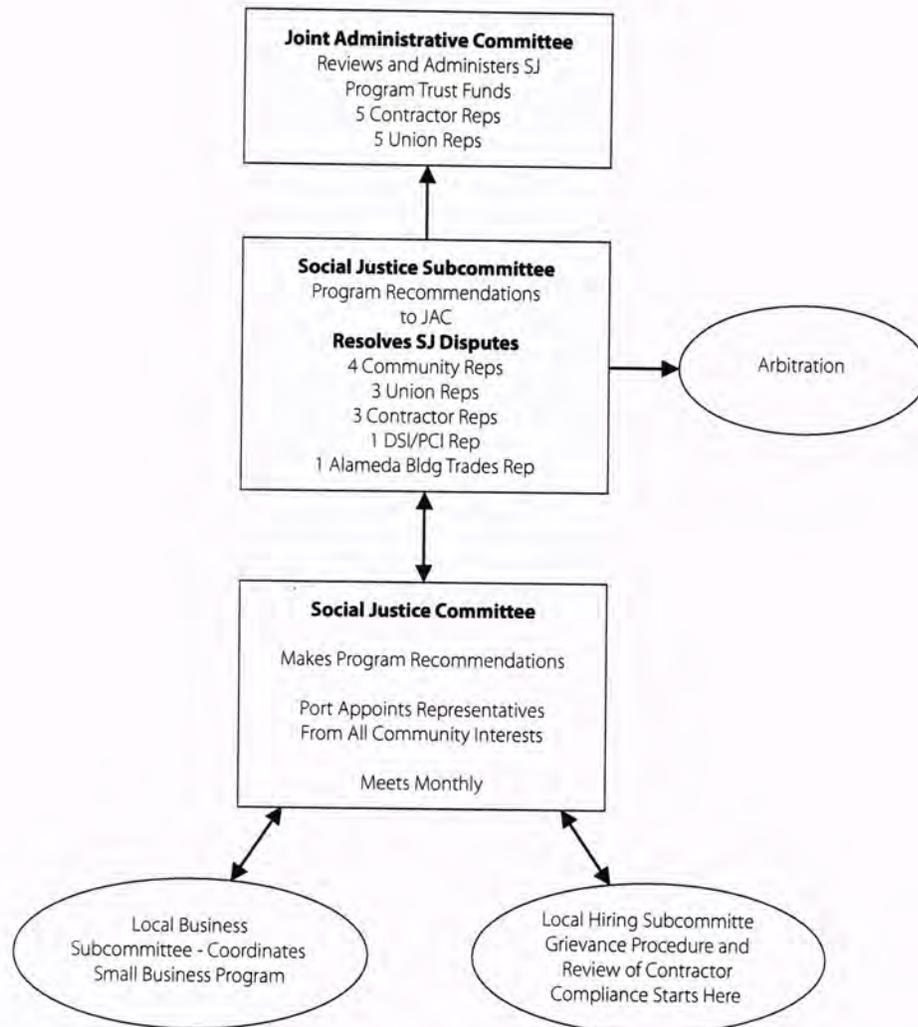
The Port of Oakland PLA included three goals with respect to disadvantaged populations: (1) the Port's commitment to existing community programs such as its Non-Discrimination and Local Small Business Utilization Program; (2) an effort to engage local firms, which historically had been excluded from large projects in favor of out-of-town contractors; and (3) an effort to involve disadvantaged residents, who had historically been excluded from both union and nonunion jobs on projects. A carve-out program for small businesses and a program to bring local residents from targeted areas into apprenticeship programs addressed these issues.

The carve-out program allowed up to \$15 million of the value of the contract covered by the PLA to be excluded from the requirements of the PLA. The contracts covered by this program had to be less than \$300,000 in value. Alternatively, a contractor's aggregate contractual value had to remain less than \$300,000 to remain exempt from the PLA. In turn, unions agreed to refrain from work stoppages against these contractors. They also agreed that they would not take action against contractors on the Port of Oakland PLA for issues, such as nonpayment to benefit funds, that originated on work not covered by the Port of Oakland PLA.

The targeted construction labor force populations were geographically structured with a hiring requirement keyed to the local impact area (LIA) of the Port of Oakland. The LIA, which includes census tracts with 50% or more of the local population living below the poverty level, included Alameda, Emeryville, Oakland, and San Leandro. The PLA required that residents of the LIA perform 50% of labor hours on a craft-by-craft basis. In the event that there were not

FIGURE A

### Port of Oakland PLA Social Justice Program



SOURCE: Johnston-Dodds (2001).

a sufficient number of workers living in the LIA to meet this requirement, the labor hours could be made up by residents of Alameda and Contra Costa counties.

The administration of the social investment terms was overseen by three committees: the Social Justice Committee (comprising community representatives appointed by the port), the Joint Administrative Committee (five union and five contractor representatives), and the Social Justice Subcommittee (four community representatives, three union members, three contractors, one Building Trades representative, and one port representative). A diagram reflecting the committee composition is shown in **Figure A**.

The roles of the Social Justice Committee included: (1) a review of monthly reports on social justice programs; (2) program and funding recommendations to further social justice goals of the PLA; (3) oversight of contractor compliance;

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(4) referral of complaints about social justice violations to the social justice subcommittee of the joint administrative committee of the PLA; and (5) collaboration with the workforce development agencies to provide services to support workforce development efforts such as pre-apprenticeship programs. The social justice activities were supported by a \$0.15 per craft hour contribution up to \$1 million.

As the diagram shows, the structure of the social justice program links the Social Justice Committee and the Joint Administrative Committee, which oversees the funds produced by the hourly contribution, through the Social Justice Subcommittee. This creates a means for the stakeholders<sup>23</sup> in the social justice program to discuss issues and develop solutions without involving the community stakeholders or port in the administration of the apprenticeship program or contributed funds.

A critical issue in moving the social justice goals of the PLA has been to prepare prospective residents of the LIA for apprenticeships. Although almost 500 residents of the LIA had entered apprenticeship programs by mid-2001, the numbers of local hires and apprentices were considerably below the local hiring and apprenticeship goals. To address these needs effectively, the Bay Area Construction Sector Intervention Collaborative (BACSIC), a collaboration of community groups and the building trades, formed to provide basic construction skills and establish a central training site in Oakland. BACSIC provided fundamental educational and remedial resources, including “soft skills” development training in areas such as dependability, attendance, communication, and problem-solving; on-site pre-apprenticeship and trade-certified apprenticeship training; employer-based job training; on- and off-site supportive services (life skills training, housing, child care, transportation assistance, primary health care, mental health and substance abuse services, and domestic violence services); and job linkage services.

While issues remained for this particular PLA, it was more successful in meeting the social investment needs of the community than prior large public works projects and provided a foundation for the social investment provisions of other West Coast PLAs.

### ***A case study: The Los Angeles Community Redevelopment Agency PLAs***

In March 2008, the Los Angeles Community Redevelopment Agency adopted a policy that requires construction projects receiving a threshold level of subsidy to be completed under PLAs with provisions for the hiring of local and disadvantaged workers. The Los Angeles Community College District (LACCD), the Los Angeles Unified School District (LAUSD), and the City of Los Angeles each signed a PLA incorporating provisions required by the redevelopment agency.

Both the community college district and the school district had prior experience with PLAs and had incorporated pre-apprenticeship programs into them. Although provisions vary between these PLAs, each incorporates requirements or goals for the hiring of local residents from low-income areas as apprentices and for the employment of “at risk” former offenders and youths. The community college PLA covers \$1.1 billion in construction; the city contracts \$382 million. While the projects being built under these PLAs are ongoing, early results indicate a favorable effect on hiring targeted populations. A report from the UCLA Labor Center (2009) on the community workforce provisions of PLAs negotiated under the guidelines of the redevelopment agency reached nine conclusions:

1. Local hiring provisions in PLAs significantly increased the number of local hires. We base this on a comparison between one Los Angeles City project for which local hiring PLA provisions were not thoroughly applied and four similar projects for which these provisions were applied and followed.
2. Local hiring goals of 30 percent were met and exceeded on all three PLAs. In fact, local hires—including apprentices and, under some agreements, disadvantaged workers—typically were about 35 percent of all hires.

3. Compliance should be measured on a project-by-project basis. In our case studies, local hiring goals were applied to the specific building project as a whole, allowing some subcontractors to exceed local hiring goals and some subcontractors to fall short.
4. Large subcontractors and general contractors disproportionately assumed responsibility for meeting local apprentice and journey worker hiring goals. In analyzing Los Angeles City projects, we found that small subcontractors tended to have a lower percentage of local apprentices and local journey workers than did larger subcontractors and general contractors.
5. Apprentices on new construction came on the job later than journey workers. Construction projects have a ramp-up period followed by full construction and then a finishing-off period. Early in a project's lifecycle, contractors met local journey worker hiring goals, but not those for apprentices or local apprentices. Later, as the project hit its stride, apprentice and local apprentice goals under the PLAs tended to be met.
6. Contractors improved their local hiring attainments as they gained additional experience. Our analysis of LAUSD data concluded this to be true for LAUSD projects.
7. On LAUSD contracts, contractors on moderately paced contracts met local hiring goals more easily than did contractors on fast-tracked LAUSD projects.
8. Forty-one percent of apprentices, 39 percent of journey workers, and 23 percent of foremen on LAUSD projects were local hires. This suggests that contractors emphasized hiring local apprentices, a significant finding because one of the goals of local hiring is to encourage the entrance of local workers into the construction trades through apprenticeships.
9. The success of local hiring goals depends on the size of the local area from which hires will be sought. In the case of the LACCD, two local areas were defined: a small area that included only the zip code in which the project was being constructed, and a larger area that consisted of the overall LACC district. The nine LACCD projects we studied all met or exceeded the 30 percent local hiring goal established by the PLA. Typically, only about 5 points of these 30 percentage points came from the narrow definition of "local"—that is, the zip code area in which the project was being constructed. The remaining 25 percentage points typically came from the larger local area.

Both the Port of Oakland and the Los Angeles PLAs required extensive initial negotiation, complex institutional structures, and ongoing discussions between the stakeholders to keep the programs on track. It is doubtful that such an agreement or program would be possible absent unions and signatory contractors and the use of PLAs. The nonunion contractors lack the institutional structure needed to negotiate and oversee agreements that accomplish the ends of the Port of Oakland and Los Angeles PLAs. Nonunion training programs are generally not sufficiently developed to meet the training requirements of these programs. There is no obvious means for nonunion contractors to obtain the assent of the existing workforce to the substantial changes required by these agreements. Finally, while unions and signatory employers have hiring rules that provide a relatively structured and transparent system by which trainees can obtain employment once their apprenticeship is completed, there is considerably less assurance that trainees will be provided fair access to employment once a project is completed.

### ***Using school PLAs to develop the construction labor force***

It has not always been easy for the construction industry to recruit good high school students into apprenticeship programs. The best high school students are pointed toward college, and construction suffers from the perception—which is not completely untrue—that it is a difficult, dirty, dangerous, and cyclical industry. Nonetheless, construction needs

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young people who have the work ethic and general skills to succeed in the industry. As Michael Crawford, in his recent best-seller *Shop Class as Soul Craft*, points out, skilled manual work requires a sophisticated understanding of physical systems and an ability to integrate this knowledge into action that produces the desired result in an efficient manner. Exposure to construction work has the potential to attract excellent students who would otherwise follow the college track. Exposure to this type of work might also persuade more high school counselors and teachers that skilled construction training provides a satisfactory alternative to college for students who are so inclined, even if they have the ability to succeed in college.

### **The San Jose Construction Academy**

School PLAs have been used to provide high school students with construction experience and establish ongoing construction training programs for both blue-collar trades and white-collar professions. An example can be found in San Jose, Calif. In March 2002, voters in San Jose's East Side Union High School District approved a \$300 million bond issue to be used for school construction and renovation. Virtually every high school in the district was to undergo comprehensive renovations, and several new facilities—such as adult learning centers, a gymnasium, and even a cable television and radio studio—were to be built at some of the schools. Although some work had already taken place, in 2004 the district entered into a PLA with the Santa Clara and San Benito Counties Building and Construction Trades Council.

The district decided on a PLA, in large part, because it saw the agreement as a mechanism to expand its vocational education programs into both the blue- and white-collar construction occupations. The district has a well-established vocational education program that is part of its career services approach to education. The East Side already had several vocational academies operating, and the district viewed the PLA as a means to establish a program in construction occupations. The novelty of the East Side PLA, and the sweetener that led to its signing, was a provision connecting work under the PLA with the establishment of a Construction Technology Academy that would offer pre-apprenticeship training, summer internships, and work in both the trades and white-collar construction occupations.

Thus, the East Side PLA is innovative in several ways. First, it is an example of a new form of PLA that attempts to find new areas of win-win in construction collective bargaining by bringing a new player to the table, the owner—in this case local school administrators and elected members of the school board. Second, it is an effort to recruit high school students into the construction industry through an institutionalized mechanism in order to better compete with other industries for talented labor. This aspect of the agreement directly addresses training problems posed by the retirement of the baby boom generation. Third, it is an effort to solve a school district's problem of creating meaningful education for those not bound for college, an education that provides the student with an awareness of possibilities, prepares the student appropriately for the demands of the labor market, gives the student experiences that will qualify him or her for advancement, and allows the student in this case to "test drive" a full range of blue- and white-collar opportunities within an entire industry. Finally, by requiring participating contractors to provide employment, through the auspices of the PLA, this particular institutionalization of a journey from school to work seeks to overcome the weakness of previous similar experiments by putting students to work rather than on job lists. Certainly, like other PLAs, this agreement was motivated by traditional concerns for work and the conditions of work on the part of unions and by the need to develop an adequate supply of skilled and qualified labor on the part of construction owners. However, these traditional motivations were not paramount. The novel and experimental motivations listed above were the fundamental reasons this PLA was signed. An appendix to the PLA contains the essential elements of the plan:

The Parties have agreed to create a Construction Technology Academy ("Academy"), funded by the District, to carry out the training and employment objectives of Appendix B. The overall objectives are to (a) offer opportunities and skills necessary to enter post-secondary study [including construction apprenticeship programs as well

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as college education] and to pursue lifelong learning within the broader context of the building trades industry and (b) develop and reinforce academic course content standards in order to maximize career opportunities and technical competency.

Sub-provision (b) recognizes that schools would do a better job if the school curriculum were tied more closely to industry needs and directions. In construction, unions as well as contractors pay close attention to technological trends and customer demands. Thus, connecting the school's curriculum to the knowledge held by contractors, unions, and joint apprenticeship boards was seen as an effective method of tying industry directions to the school curriculum in the case of construction. A 16-member steering committee was created by the PLA to oversee the academy. Membership on the committee includes representatives of the joint apprentice training councils, the building trades council, and the school district. In addition to the creation of a steering committee, which binds the school district, the PLA requires the unions and the joint apprenticeship training councils and contractors to give preferential consideration for admission to apprenticeship programs to graduates of the academy. The goals of the PLA are for students to obtain actual work as interns and then as apprentices. This is accomplished by placing 30 interns per year in a five-week rotation among the trades. First, students are taught about estimation, engineering, and legal aspects of construction. Then students are given internships, which take place when school is out and construction activity is at its peak. The internship program also qualifies as a pre-apprenticeship program, gives students priority for entering union apprenticeship programs, and provides a point of entry for a number of minority students into union employment. Even if a student does not become an apprentice, he or she has the opportunity to enter the workforce as a material handler or in another unskilled position.

More than five years of experience with the construction academy suggest that this model for providing training and work experience to high school students works. The academy has been successful in giving students a broad experience across a number of trades and placing some graduates in apprenticeships, while others have chosen to attend college. Despite the current state of the construction economy in California, the academy continues to offer outstanding training in construction and has provided a model for high schools throughout California. Experience with the academy also provided the experience and energy for the Building Trades to establish a summer program for K-8 science and math teachers to be exposed to the construction industry and develop curricula that incorporate material from the industry into their teaching. To some degree this involvement promotes the industry, but it also provides an immediacy and relevance in the curriculum that enhances students' interest.<sup>24</sup>

Using PLAs to create journeys from school to work in construction is a work in progress. However, the unions are helping with the creation of a solid pre-apprenticeship program that will enhance the students' ability to qualify for apprenticeships after graduation. A key and unique provision of the San Jose PLA was its requirement for internships, combined with language that ensured graduating students would get jobs either as apprentices or as material handlers. A major hurdle facing the union construction industry has been, in the view of one union leader, the lack of a means to move younger workers into the union workforce in the face of apprenticeship admissions standards and regulations that require nondiscrimination and fair access to these programs. The solution was the proviso in the PLA that requires participating contractors to provide graduating students with jobs, either as construction apprentices or as material handlers. This requirement means that students at least transition to non-craft material-handling jobs or qualify as experienced applicants to apprenticeship programs.

Experiments of this type are not limited to San Jose. A recent PLA in Buffalo, N.Y., also focused on school construction, provides another example of a pre-apprenticeship program provided to vocational high school students. The PLA maintains that the students "shall perform 'hands-on' work in the trades."<sup>25</sup>

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## **Summary: gains and challenges for labor from social investment PLAs**

As social investments, PLAs provide clear gains to construction stakeholders and the community. First, PLAs provide a greater opportunity than many prior public training programs for different populations to attain middle-class jobs. PLA-based programs provide not only the training and work experience required for a successful career in construction but also, for the successful trainee, a place in a system that offers ongoing access to employment. Second, PLAs create connections and opportunities for dialogue and understanding between the building trades and community groups that have not been present in the past.

An important issue in thinking about using PLAs to support community development is how large the PLA has to be for these efforts to be successful. The West Coast port projects are large, multiyear projects that involve hundreds if not thousands of workers. While such projects allow for the advancement of local residents through pre-apprenticeship programs into apprenticeship programs, and finally into journeyman status, smaller projects that involve less investment and fewer workers and shorter completion times may have more limited potential opportunities for social investment. Despite these issues, inclusion of community workforce provisions is common in public PLAs, particularly on the West Coast. According to one study, nearly three-quarters of the public PLAs in California contained goals or requirements focusing on underutilized or minority employees (Johnston-Dodds 2001, 36).

Experience in Canada with social investment PLA-like arrangements illustrate the potential for conflict between communities with regard to access to training and employment opportunities. The Canadian labor movement has shown foresight in creating pathways to careers in construction for First Nation members, but fractures between First Nation communities have led to disagreements about whether to recognize members of one community as qualified to participate in projects taking place within the territory of another.<sup>26</sup> Although parallel problems have not appeared in PLAs involving social investment in the United States, they need to be anticipated.

While other publicly supported construction training programs have in the past been used as vehicles for community development, PLAs are economically better for trainees, communities, and construction unions. Previous large-scale training programs have often failed to connect trainees with jobs and have spilled large numbers of partially trained workers into the labor force, often without regard to the demand for their skills. This excess supply of semi-skilled workers undercuts wages and benefits for similarly trained workers throughout the region. Further, because the employers of trainees have often tended to follow a low-skill/low-wage business model, trainees seldom receive the additional training required to move into better-compensated positions with good wages and benefits. By giving the building trades and signatory contractors a large role in the training structure, PLAs support the growth of a higher-skilled and higher-wage labor force that benefits the trainees and their communities. Although there are many difficult issues in social investment through PLAs, it is an opportunity to be grasped.

Finally, even though community workforce agreements can present difficult issues, building trades unions and employer associations have decades of experience in negotiating agreements. This experience can be put to use in assuring that all stakeholders move forward in good faith. It is not obvious how, absent collective bargaining, the complex mechanisms for community involvement and social investment can be established and maintained.

## **Designing PLAs to improve safety and health**

The dynamic and complex nature of construction sites makes them among the more dangerous workplaces in the country. Approximately 1,200 construction workers lose their lives annually on construction sites, a rate equal to 12.3 fatalities per 100,000 full-time equivalent workers. In contrast, the fatality rate in manufacturing is between 2.3 and 3.3 per 100,000. Over a 35-year career, 0.4% of the construction workforce is expected to suffer a fatal accident. In addition, 6% of construction workers suffer a non-fatal injury each year.<sup>27</sup> While fatalities have declined dramatically in most industries, they have remained stubbornly high in construction over the past two decades, holding between 1,000

and 1,300 each year between 1995 and 2008; the number of fatalities varies with cycles in construction activity.<sup>28</sup> The stability of the fatality numbers indicates that little headway is being made, despite ongoing concern by the stakeholders in the industry.

While the nature of construction creates safety issues, the fundamental disorganization of construction sites makes improving safety particularly challenging. There may be dozens or hundreds of contractors on a site, and each with its own safety program. These programs vary greatly in effectiveness; some are well structured to improve safety while others are created to satisfy legal or insurance company requirements. As each firm's safety program potentially affects not just that firm's workers but other workers on site as well, the potential for confusion, trouble, and serious accidents is substantial on almost every construction site.

Research on safety and health on construction sites suggests that five elements are necessary for a safety plan to reduce injuries and fatalities:<sup>29</sup>

1. health and safety committees for the project as a whole (planning/oversight) and an active health and safety committee structure at the worksite that reflects the changing set of trades onsite over the course of the project;
2. an explicit training program for both apprentice and journeymen related to the site;
3. specific procedures to ensure a health and safety culture, e.g., regular morning meetings on training;
4. consistent tracking of workplace injuries and illnesses on the site and evaluation of "near-miss" situations; and
5. linking of health and safety to workers' compensation to provide cost savings for effective health and safety programs.

### ***The World Trade Center demolition as a model for a safe construction worksite***

A case study of the importance of labor involvement at all levels of safety programs can be found in the success of such programs in preventing fatalities and limiting injuries during the World Trade Center demolition. Demolition sites are particularly hazardous because of the instability of the structures and unpredictability of the kinds of materials being removed. The challenges of the World Trade Center were especially difficult because of the condition of the site and the amount of hazardous particulate matter, the number of workers onsite, the treatment of the site as a rescue operation rather than a demolition site, the stresses on the site because of the condition of the foundation, and the number of organizations involved in the operation.

Despite severe conditions, there were no fatalities on the World Trade Center demolition site, and not one of the 57 lost-time injuries was life threatening.<sup>30</sup> This record is particularly notable as more than 10,000 construction-related personnel were on the site between September 11 and the completion of the demolition. The success was achieved in large part because the parties to the demolition—federal, state, and local agencies; construction managers and contractors; union leaders and the craft workforce—took a cooperative approach to safety issues.<sup>31</sup> The parties agreed to five principles for administration of the site safety program: (1) mutual respect for all involved parties; (2) the right of workers and their unions to organize a structure that would give voice to their concerns and advance their interests; (3) a genuine commitment to health and safety that is reflected in the allocation of agency and contractor resources and staff; (4) a mechanism and commitment to communicate across government agencies and to coordinate all activities between agencies to ensure smooth operation throughout the site; and (5) immediate abatement of identified safety and health hazards (Grabelsky n.d.).

To implement the program, the Occupational Safety and Health Administration (OSHA) undertook a policy of "protection, not citation" and provided ongoing technical support to determine how best to protect workers from the multiple dangers on the site. In addition, contractors, unions and the CPWR—The Center for Construction Safety and

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Research provided training for more than 2,000 workers who spent time on the site. Finally, a structure that involved all of the parties engaged in the demolition was established to monitor and address safety issues: Grabelsky writes:

A two-tiered health and safety committee (LMHSC) involving both labor and management representatives were established to quickly identify and correct safety hazards. A Leadership Oversight Committee comprised of the chief elected union officials, key staff from the site contactors, as well as representatives of employer associations, OSHA, and the Department of Design and Construction of New York City. A site committee—comprised of union stewards and operations and safety staff, contractors and agencies—met once a week. The meeting was followed by a walk-through of the site by committee representatives to identify hazards and ensure they were immediately corrected. The committee produced a weekly Safety Bulletin that was widely distributed through a network of union stewards who met every week to identify safety hazards, propose safety interventions, and review health and safety issues for daily tool box talks with their members. OSHA sampling result summaries were also distributed and discussed weekly at these meetings, and again monthly with the Leadership Committee. (Grabelsky n.d., 6)

This joint structure required extensive communication between agencies, organizations, and individuals who do not typically work with one another on a project. The marked success of this effort is reflected in a lack of fatalities and the low incidence of lost-time injuries—an incidence that was well below construction industry standards. It points strongly to the importance of sharing of responsibility and authority on safety matters, and integrating the full workforce into the safety effort. Although the WTC demolition was not conducted under a PLA, the success of this project points toward the type of provisions needed in a PLA to improve safety performance.

### ***The current state of safety and health provisions of PLAs***

The majority of PLAs codify but do not alter existing safety programs. PLAs generally specify that the construction manager must establish a set of worksite safety rules in consultation with either a general labor/management committee or a safety-specific labor/management committee. Provisions related to drug and alcohol testing may be specifically included in a PLA. The PLA may also include a provision to adopt safety practices necessary as part of an Owner Controlled Insurance Program (OCIP), sometimes referred to as wrap-up insurance. In addition, provisions for emergency work across trade lines in the event of accident, fire, or “act of God” often appear in PLAs, although not necessarily in the health and safety section of the agreement. In short, health and safety language in PLAs can range from perfunctory to very detailed. Often, if a PLA has perfunctory language it is because there is a highly detailed health and safety program, which may include drug testing, in a separate document.

An example of safety language from the Rockland County, N.Y. Courthouse PLA states:

#### **ARTICLE XIV – SAFETY PROTECTION OF PERSON AND PROPERTY**

##### **SECTION 1. SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA requirements are at all times maintained on the Project and the employees and Unions agree to cooperate fully in these efforts. Employees must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Authority from injury or harm. Failure to do so will be grounds for discipline, including discharge.

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## **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the safety, security and visitor rules as established by the Contractors and the Construction Manager for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

Even this simple language improves on the baseline protections provided in the Occupational Safety and Health Act by making OSHA requirements enforceable under the dispute resolution procedures of the PLA and by establishing some common practices across contractors.

### ***A case study: the safety success of the Boston Harbor Project***

The Boston Harbor cleanup project, conducted between 1986 and 2001, involved 23 million hours of craft labor over the course of 15 years and expenditures of \$3.6 billion. The lost-time incident rate was 4.1%, compared to a national average for heavy construction of 6.2% (Dunlop 2002; Armstrong and Wallace 2001). Further, the lost-workday incident rate was 134.7% for Boston Harbor versus a national heavy construction rate of 150.4%.<sup>32</sup> Later analysis indicated that the lost time incident rate was 40% below the heavy construction average for the 36 million exposure hours on the project (Armstrong and Wallace 2001, 15). Paralleling the World Trade Center, the success of the Boston Harbor Project in reducing injuries reflects both a serious dedication to worker safety and the embodiment of this dedication in contractual structures to provide a safe workplace. Different, however, from the World Trade Center project was the geographical scope and duration of the Boston Harbor Project, which make the project's success even more impressive.<sup>33</sup>

In contrast to many construction operations, the stakeholders in the Boston Harbor Project agreed that safety took priority over production and that potentially unsafe operations would be shut down until safety matters were resolved. The labor/management committees created under the PLA provided the means to create an ongoing awareness of safety among the workforce. They intentionally made information about safety matters available to stakeholder representatives; they conducted regular tripartite meetings to discuss safety issues and acted on the joint decisions; and they delivered safety decisions and information to the workforce. Craft workers met each week to discuss safety information disseminated by the project labor/management committee, and the conditions and practices that might affect the safety of their work. Information from these meetings was forwarded by stewards to the project labor/management committee for discussion and action. Regular labor/management meetings reviewed all safety incidents and information on safety matters forwarded from the craft worker meetings. The discussions were recorded and the decisions of this committee were quickly implemented. While Boston Harbor's strong record with respect to safety can be attributed to dedication of the stakeholders, structures created by the PLA were critical in turning this dedication into effective action. Similarly, programs have been adopted by other large projects built under PLAs in the Boston area, including the Central Artery Tunnel project (the "Big Dig") and the Logan Airport expansion. Not surprisingly, both had excellent records with respect to safety and health.

### ***Safety provisions of other PLAs***

Another example of a PLA that creates structures to improve project safety is found in a Washington PLA, part of which is reproduced here:

16.1 The parties to the agreement will participate in the Voluntary Protection Program....In the VPP, management, labor, and government establish a cooperative relationship at the workplace to address worker safety and health issues and expand worker protection....

16.2 The parties to this agreement will form a joint Labor/Management Safety Committee consisting of equal numbers of contractor and Union representatives, to be agreed upon by the parties, which shall be jointly chaired by the site representative of [the construction manager] and an official of the Building and Construction Trades Council....

16.3 The [construction management] team will develop a Project Safety Committee of contractors' employee representatives to address issues pertinent to activities onsite, plan and discuss future project work and review the current health and safety plan and procedures....

16.4 Formal safety and health training is required of all contractors for their employees....

16.5 It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Owner, [construction manager], or the Contractor.

16.6 Employees shall be bound by the safety, security, and visitor rules and environmental compliance requirements established by the Contractor, [the construction manager], or the Owner....

16.7 The use, sale, transfer, purchase and/or possession of a controlled substance, and/or alcohol while on the Owner's premises at any time during the workday are prohibited. Contractors will implement a drug policy meeting [the construction management firm's] minimum standards for Drug-Free Workplace Program separately attached under Appendix D. [The construction manager] may conduct reasonable searches, as permitted under the law, including random searches, of all workers on site and may require and receive the results of a 7-panel drug screen test of any worker on site. Any worker found to possess or be under the influence of an article prohibited by the Standards, or refusing to be tested or consent to a reasonable search may, in [the construction manager's] sole discretion, be immediately removed from the project site and denied future access....

16.8 These procedures outline the safeguards set forth for the testing of employees for prohibited and controlled substance, adulterants, and alcohol. It is agreed, with respect to such test procedures, that: (i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program; (ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time he reported for the test(s); and (iii) where a contractor requests a person to report for purposes of pre-employment substance abuse and alcohol test, and does not intend to place him in an active work position on that day, the person shall receive four (4) hours or pay at the regular straight-time hourly rate if the test is negative.

16.9 The authorized [sic] use or possession of firearms, weapons, explosives, or incendiary material on or near the Project premises...is prohibited....

16.10 The parties acknowledge that the environmental and safety restrictions governing conduct at the Project site prohibit smoking at any time in any facility....

16.15 Violators of the [program] will be subject to termination for cause with the same conditions for rehire as established in Article IX [referral provisions].

As the Boston Harbor PLA and World Trade Center agreements demonstrate, the agreements have the potential to improve project safety. Concretely, the agreements can mandate safety programs and standards and establish structures in keeping with the five steps needed to improve safety. Realizing this potential requires that the parties to PLAs value safety and be willing to create the structures needed to provide it.

## **Potential cost savings through safety provisions in PLAs**

The safety improvements established by PLAs can also serve to reduce project costs and improve the performance of the workers' compensation system. In mandating a single shared safety program, PLAs overcome the problem of coordinating the multiple safety programs that exist on most sites. Thereby, the consolidation of safety programs reduces costs. For example the Eastside Reservoir construction project in California, a \$2 billion project begun in 1994 that required two dams and created a four-and-a-half-mile lake, utilized a PLA that allowed the parties to consolidate over 250 safety programs conducted by over 250 subcontractors and 20 general contractors. According to a representative of the project owner, the Metropolitan Water District of Southern California, this resulted in a savings of \$30 million in insurance costs (Plemon 2004).

PLAs may also be used to improve worker performance and sometimes reduce costs. A number of states now allow for workers' compensation "carve-outs," the creation of a project- or industry-specific workers' compensation system that allows the use of alternative dispute resolution (ADR) systems, in place of litigation, for the resolution of conflicts. The use of ADR holds out the possibility of swifter and less-costly dispute resolution over workers' compensation cases. Early research by the California Division of Workers' Compensation (1996 & 1997) suggested that carve-outs reduced litigation, returned workers to work more rapidly, and reduced the cost of workers' compensation. A more recent and nuanced study, *Carve-outs in Workers' Compensation: An Analysis of the Experience in the California Construction Industry* (Levine et al. 2002) found that use of such systems improved injured workers' situations with regard to resolution of disputes but did not have a systematic effect on costs. The carve-outs remain an option that can be created through PLAs when the parties believe they would serve to improve performance of the workers' compensation system.

## **Summary**

Safety remains a serious problem on many construction sites, where fatalities remain a reliable metric of the lack of adequate precautions. A number of steps can be taken to improve construction safety, but for reasons having to do with industry structure, culture, and knowledge, these steps are not implemented on most sites. PLAs offer a means of improving health and safety by establishing the structures that have been demonstrated to improve safety performance on construction sites.

## **Designing PLAs to resolve disputes**

Labor disputes in construction are much less common today than they were 30 years ago, when the sector accounted for 5% of employment but a quarter of all strikes (Mills 1980). Nonetheless, the potential for work disruptions remains, and it deserves the attention of unions, contractors, and owners.

The importance of the issue was highlighted by the July 2005 Construction Users Roundtable's *Tripartite Initiative Report: Eliminating Work Disruptions and Jurisdictional Disputes*. Many of the recommendations in the report could be handled by a PLA and, in fact, a number of them are typically found in PLAs, including:

- Mandatory "pre-bid" conferences to "identify possible challenges of a particular project (jurisdictional assignments, jobsite issues, working conditions, sequence of work, schedules, etc.)."
- A requirement that employees sign a statement "acknowledging that work disruptions on the project are prohibited and that violators will not be eligible to re-employment...(an expedited grievance procedure should be available...)"
- Mandatory "pre-job" conferences for all contractors and subcontractors; "[a]dopt uniform pre-job procedures for all contractors and subcontractors on a project that require them to identify manpower requirements and proposed jurisdictional assignments."

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- Frequent labor-management meetings at the project level.

The purpose of this section is to discuss a number of practices that are included in PLAs and are being used by labor and management to resolve disputes and assure the timely completion of projects.

### **Using PLAs to avoid disruptions**

*The Building and Construction Trades Department Model PLA.* Most PLAs include several sections on dispute resolution to deal with issues ranging from job actions to grievances to jurisdictional disputes. The Building and Construction Trades Department (BCTD) of the AFL-CIO provides guidance on these matters through a model PLA, first developed in 1997 and revised twice in response to local conditions and experiences in contract administration. The 1997 model PLA included three separate dispute settlement procedures: (1) a “traditional” three step grievance/arbitration procedure; (2) a procedure for the settlement of jurisdictional disputes, and (3) an expedited arbitration procedure, included within an article on “Work Stoppages and Lockouts.”

The first two dispute settlement procedures remain in the most recent model PLA. The expedited arbitration procedure concerning work stoppages and lockouts has been eliminated from the model PLA, but is still included in some actual PLAs. Further, in guidelines accompanying the 2008 BCTD model PLA, it is recommended that parties at the local level negotiate an expedited arbitration procedure for dealing with work stoppages and lockouts.

Article V of the revised model agreement offers strong language on strikes and lockouts:

- Section 1 contains a broad proscription on job actions: “...there shall be no strikes, picketing, work stoppages, slowdowns or disruptive activity for any reason by the Union...and there shall be no lockout by the Contractor.”
- Section 2 allows for disciplinary action against employees who engage in a proscribed activity and stipulates that such individuals shall be ineligible for rehire for at least 90 days.
- Section 3 requires a general president to “use the best efforts of his office” to cause a local union to “cease violations of this Article.”

As mentioned, the model agreement also contains a typical multistep grievance and arbitration procedure that may be used for “any questions or disputes arising out of and during the term of this Project Agreement.” Jurisdictional disputes are specifically excluded from the grievance procedure, but are addressed in a separate article of the model agreement.

Step 1 of the grievance procedure allows for any employee, through his or her local union business representative or job steward, to present a grievance to the contractor’s “worksites representative” within five working days of the occurrence of an alleged contract violation. The parties shall attempt to resolve the matter within three working days. Following any meeting with the union representatives, the contractor must issue a decision within 24 hours, and the union, if dissatisfied with the response, has 48 hours to proceed to Step 2.

The model agreement also allows unions and contractors access to the grievance procedure. In such cases, if the parties cannot settle their differences in three working days they may proceed to Step 2.

At Step 2, the contractor and an international union representative must meet within seven working days to attempt settlement. If settlement is not reached, the parties have seven days to request arbitration.

The model agreement suggests that the parties mutually select an arbitrator, but if unsuccessful they can turn to the American Arbitration Association for a list. Further language requires the strict interpretation of time limits and instructs the arbitrator to consider only the issues before him or her, and to avoid changing, amending, adding to, or detracting from the PLA.

Finally, the model PLA provides for the settlement of jurisdictional disputes with reference to the *Plan for the Settlement of Jurisdiction Disputes in the Construction Industry*. That is, all jurisdictional disputes should be settled in accordance with the requirements and procedures of the plan. The model PLA proscribes jurisdictional work stoppages. Pre-job conferences are also required as a means of forestalling jurisdictional disputes.

### **Language in actual PLAs**

Some of the differences in dispute settlement procedures between actual PLAs and the BCTD model are minor and more procedural than substantive. For example, there are slight differences in the number of arbitrators named to handle expedited complaints; liquidated damages may be higher than \$10,000; time limits in the grievance procedure sometimes vary; and the Federal Mediation and Conciliation Service or state agencies are sometimes named as sources for arbitrators rather than the AAA. The discussion below focuses on more substantive matters.

### **Procedures to deal with job actions**

Beginning with the no-strike/no-lockout clauses, all of the agreements we reviewed contain some type of guarantee that the project will be free of work stoppages and lockouts. In most cases, such guarantees are broad and cover all types of possible disputes. In about one-third of the PLAs reviewed, however, there is an explicit exemption for work stoppages caused by an employer's delinquency in payments to joint trust funds. That is, even under the PLA, the unions reserve the right to strike if an employer falls behind or fails to make payments to health care or pension funds. It is also typical that when such a right is reserved, additional language requires the union to give an employer notice (five days, for example) before beginning a strike. As well, several of the agreements—including this example from Minnesota—state that the unions may withhold labor for nonpayment to funds “provided such withholding of services shall not be accompanied by picketing, hand billing, or advising the public of the existence of a labor dispute against a delinquent employer.”

About half of the PLAs reviewed contain no expedited procedure for determining whether a proscribed job action occurred, nor any provision for the payment of liquidated damages. As mentioned above, expedited arbitration procedure concerning work stoppages and lockouts has been removed from the BCTD model agreement, perhaps due to its lack of popularity at the local level. In some of the PLAs lacking an expedited procedure a statement such as “...any aggrieved party may immediately commence an action for injunctive relief...” is included.

A number of PLAs have language for the continuation of local terms and conditions in the event of an impasse in bargaining; they often also have language for the retroactive application of any new conditions after settlement.

An issue with strike bans in PLAs is whether work stoppages over safety are covered by these bans. Stopping work to get serious safety issues addressed is common in construction and can be an effective means of resolving threatening problems promptly. Absent specific language in PLAs protecting such stoppages, they are likely banned by the language of PLAs. One possible solution to this problem is to allow stoppages over safety, but allow them to be reviewed by a neutral party to determine whether they are over safety conditions or instead a pretext for other issues.<sup>34</sup>

### **Grievance and arbitration procedures**

Most PLAs reviewed for this research contain the three-step grievance/arbitration procedure contained in the BCTD model, either to the letter or with minor modifications for time limits, arbitrator selection, etc. Nearly one-quarter of the agreements, however, contain no special grievance/arbitration procedure, but state instead that grievances should be handled “per applicable local collective bargaining agreements.” A few PLAs require—as does a Wisconsin PLA—that the parties use the procedures in local agreements but provide a dispute resolution mechanism “[i]n the event of a dispute arising under or concerning this Agreement, or if a local collective bargaining agreement does not contain a grievance/arbitration procedure.” A Michigan PLA includes a grievance/arbitration procedure, but specifically exempts electrical

workers and sheet metal workers, in deference to their bipartite panels. A Connecticut agreement is completely silent concerning grievances and arbitration; one would assume that the parties turn to local procedures.

In most cases, the terminal step of the grievance procedure is a decision by a single arbitrator who is named in the agreement, chosen by American Arbitration Association or Federal Mediation and Conciliation Service procedures or referred by a state agency. In two cases the PLAs provide for a tripartite arbitration panel. A Pennsylvania PLA—unique among those we reviewed—states that a three-member arbitration panel shall include a union representative, a contractor representative, and a representative of the property owner. A PLA in Washington State specifically states that all prevailing wage disputes shall be referred to the director of the Washington Department of Labor and Industries.

A number of PLAs limit the arbitrator to awarding no more than 60 days of back pay. A typical clause requires the property owner, construction manager, or general contractor to be apprised of any grievance actions involving subcontractors.

### ***Jurisdictional disputes***

Every PLA reviewed makes some mention of jurisdictional matters being handled through the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. The model PLA includes four sections on jurisdictional disputes; they direct that (1) work assignments are the contractor's responsibility and should be made in accordance with the plan (i.e., any past decisions or agreements); (2) if disputes arise they should be decided through plan procedures; (3) no job actions should occur over such disputes, and any individuals ceasing work are "subject to immediate discharge," and (4) contractors must conduct pre-job conferences, presumably to head off jurisdictional disputes.

Language in the scope-of-agreement clause may also be used to forestall jurisdictional disputes. This is done by stating which work and which employees are not covered by the agreement. For example, manufacturers' employees may be allowed to install certain equipment on a site without falling under the jurisdiction of the PLA.

A Washington PLA requires that each contractor and subcontractor develop a work assignment document 14 days before beginning any work. Competing unions may present evidence for their claims at a pre-job conference, and then have seven days to respond to any decisions of the contractor. Only after the local procedure is exhausted are disputes referred to the plan. An Ohio PLA allows for an arbitrator's decision if a dispute before the plan is not settled in 15 days.

A few PLAs contain language to handle jurisdictional disputes involving non-BCTD unions and/or employers who have not agreed to be covered by the plan. A Massachusetts PLA, for example, places such disputes before an arbitrator who has 14 days to hold a hearing and render a decision. The agreement specifically states that the arbitrator cannot assign work to a double crew, but may create a composite crew.<sup>35</sup> Nearly identical language is included in a New York and a Nevada PLA.

### ***Summary***

One of the more important purposes of a PLA is to assure that a project is as free of work disruptions as possible. PLAs accomplish this goal through broad no-strike language, fast and harsh penalties for violations of such clauses, the use of grievance and arbitration procedures to handle most problems, and highly developed methods to handle jurisdictional issues, such as pre-job conferences, detailed work assignment language, and methods for neutral settlement.

This brings us to the question of whether PLAs have, in fact, been successful in resolving disputes before work is disrupted. This is a difficult question to answer, since good data on work disruptions are scant and no database indicates whether a disruption has occurred on a project covered by a PLA. Based on analysis of the Lexis/Nexis database of newspaper and wire reports, approximately 50 strikes that have been significant enough to gain press attention have occurred around the country in construction during the past 10 years (including one involving nonunion ironworkers). These press reports mention four work stoppages that occurred despite a PLA, including three in the San Francisco area in 1999 and 2000 and one in Providence, R.I. in 1999. The latter involved picketing by rank-and-file union members

who were unaware of the no-strike provisions of a PLA; the picketing resulted in a nonunion firm leaving a worksite. The matter was resolved in one day.

The Lexis/Nexis database does not include any press reports after 2000 specifically concerning work disruptions on PLA-covered sites. There are a number of reports, however, which note work continuing on PLA projects despite strikes by area construction unions. For example, in May 2009, *The Plain Dealer* of Cleveland, Ohio reported on a Laborers Union strike in northeastern Ohio, but noted that “Local 310 members on several larger projects, including those at the Cleveland Clinic and University Hospitals, remain on the job because the union has project labor agreements prohibiting strikes or other job actions” (May 7, 2009, C2). Similarly, the *PR Newswire* reported in the spring of 2006 that a Laborers Union strike against over 200 employers in the Chicago area “is expected to affect most construction projects in Cook, Lake, DuPage, Will, Grundy, Kendall, Kane, McHenry and Boone Counties except for public works projects that are covered under multi-union project labor agreements.” A *St. Paul Pioneer Press* article on a 2004 Ironworkers’ strike in Minnesota noted, “Aside from bridge work, ironworkers also are crucial in the construction of commercial buildings. But most large commercial buildings are covered by so-called ‘project labor agreements,’ which prohibit walkouts by all construction unions” (May 28, 2004, C1). An Associated Press report of a 2002 carpenters strike in Connecticut pointed out that, “Striking carpenters were scheduled to meet Wednesday at 6:30 a.m. at their local union halls before fanning out to job sites across the state to picket. The strike will not affect construction jobs that have project labor agreements.” In 2001, a *Boston Herald* report on a Sheetmetal Workers strike stated that, “The sheet metal workers on some high-profile jobs covered by project labor agreements are legally barred from walking off the jobs” (August 2, 2001, 33). The *St. Paul Pioneer Press*, reporting on a strike by six unions in 2001, noted, “But work on large construction projects—office towers and the like—shouldn’t be affected by a work stoppage. That’s because most major projects are covered by separate project labor agreements” (May 8, 2001, C3).

More research is needed to determine whether PLAs are effective dispute settlement tools. Such research should examine not only differences between projects covered by PLAs and those that are not, but also consider whether particular language or practices under differently worded PLAs afford better protections against work disruptions.<sup>36</sup> Until then, we must rely on press reports and other anecdotal evidence, which, to date, suggest that PLAs have generally been successful in preventing work disruptions.

## **Designing PLAs to deal with nonunion contractors**

As discussed at the beginning of this report, the controversy over the use of PLAs on public projects accelerated with the growth of the nonunion sector in the construction industry. At one time, there were very few nonunion firms large enough to compete for work that would likely be covered by a PLA. That is no longer the case. Today, nonunion firms are able to compete for nearly all forms of construction work in nearly all parts of the country. In addition, as PLAs have come into more frequent use, they have been applied to smaller projects. While an atomic energy facility may have been the typical PLA project of the 1950s, today a local high school is just as likely to be built under a PLA.

PLAs affect both union and nonunion contractors. In assenting to a PLA, contractors agree to abide by collectively bargained terms and conditions. For union contractors, the major change is working under the somewhat different rules that might be called for by the PLA. But for the nonunion contractor, working on a PLA can be a substantial departure from normal operations. For one thing, meeting the terms and conditions of the local collective bargaining agreement often results in the contractor paying considerably higher wages and benefits. Higher wages and benefits can be a particular problem for nonunion contractors who use relatively large numbers of semi-skilled workers rather than follow the union model of smaller numbers of highly skilled workers. The lower productivity of semi-skilled workers is economical if they can be paid relatively low wages, but the arrangement may not be workable at union rates. Depending on the terms of the PLA, nonunion contractors may be required to hire some or all of their employees from a union hall. Differences in work rules regarding time keeping, persons allowed to do various types of work, and time off may

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also make working under union rules challenging. Nonunion contractors may also be required to pay into funds to support apprenticeship training, safety programs, and other institutions common to organized employers.<sup>37</sup> A common complaint is that nonunion contractors may have to pay into both their firms' pension and health funds and into union programs, but evidence of double payments is scarce.<sup>38</sup>

### ***Participation on PLA projects by nonunion firms***

Nonunion contractors and their associations often call PLAs "union-only" projects. While most PLAs, including all public sector PLAs, allow participation by all qualified firms, the real question is whether the requirements of PLAs in effect preclude nonunion contractors from bidding or from operating successfully under the terms of the PLA. For example, a requirement that a nonunion contractor sign the local collective bargaining agreement for all of its work, whether covered by the PLA or not, would likely discourage most nonunion contractors from bidding. There has, however, been a tendency for nonunion contractors to treat projects under PLAs as union-only even when the agreement was written to allow open shop contractors to participate.

Language in PLAs can be more or less favorable toward nonunion participation, making it simpler or more complex for nonunion contractors to participate in a project. In some PLAs, nonunion contractors are required to use union referral systems, such as hiring halls, exclusively; in others they are able to bring part or all of their existing labor force onto a project. Similarly, some PLAs require contractors to sign the local collective agreement and become union contractors; others require only a letter of assent (i.e., an agreement to abide by the PLA) and do not require signing the local agreement. Decisions about the terms under which nonunion firms may participate in a project covered by a PLA are, in the end, part of the negotiation between the construction manager and the local building trades organization, subject to the applicable laws and regulations. These decisions affect the ease with which nonunion contractors can bid on a project and hence the willingness of such contractors to participate.

PLA openness to nonunion participation involves six issues: (1) whether nonunion contractors can bid on PLA work and whether the owner can accept their bid; (2) what the nonunion contractor is required to do with respect to the local collective agreement; (3) how the nonunion contractor obtains its labor force; (4) whether nonunion workers are required to join the union; (5) how nonunion workers are provided benefits and how benefit costs will be handled to assure the nonunion and union contractors a level playing field; and (6) how small and minority contractors can participate in a project covered by a PLA. Another issue is why unions and union contractors would negotiate a PLA that allows nonunion participation.

### ***Can nonunion contractors bid on PLA work and can the owner select that contractor?***

Today, all public and many private PLAs explicitly allow any contractors to bid on a project without respect to their union status. For example, Toyota's 2003 San Antonio, Texas PLA states:

TMMTX and/or the Construction Contractor(s) have the absolute right to select any qualified, bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement.

Harvard University's 2009 PLA, the most recent of a series of agreements first negotiated in 1992, states:

The Owner and Project Contractor have the absolute right to select any qualified contractor for the award of contract(s) on any covered Project.

Nonunion contractors regularly win bids on PLA construction projects. For example, in 1991 the GAO found that 86 of 286 contractors on an Idaho National Engineering Laboratory project covered by a PLA were nonunion (General Accounting Office 1991). A number of nonunion contractors participated in the Southern Nevada Water Authority (SNWA) project, the Boston Harbor Project, and the Big Dig. In testimony before Congress in 1998, Michael D'Antuono, president of Parsons Construction Company, said that six of 16 prime contracts and 26 of 70 both prime and subcontracts went to nonunion firms on the SNWA.<sup>39</sup> Reviewing results for the Boston Harbor Project at the request of John T. Dunlop, ICF Kaiser found that 55 prime contracts went to union contractors and 16 to nonunion contractors; of the 257 prime contracts and subcontracts, 155 went to union firms and 102 to nonunion firms (U.S. Senate 2000). Nonunion site preparation and concrete contractors worked on the Toyota assembly plant in San Antonio in 2004 and 2005.<sup>40</sup>

### ***What is the nonunion contractor required to do with respect to local collective agreements?***

All PLAs require that winning bidders sign a letter of assent, which requires that the contractor abide by the terms of the PLA. These will typically include the union agreement or the schedule of wages and benefits. Whether the bidding contractor is required to become signatory to the local agreement varies among PLAs. Some require that winning bidders do so. Others permit them to become signatory to the local agreement only for the work covered by the PLA. Still others require that contractors sign the assent agreement but do not require them to become signatory to the local collective agreement.

The range of language with respect to nonunion contractors is bracketed by the Harvard and Toyota San Antonio agreements. The Harvard agreement requires that the contractor become signatory, but also requires that the union sign an agreement with the contractor:

The Owner and Project Contractor have the absolute right to select any qualified contractor for the award of contract(s) on any covered Project provided, however, that such Contractor is willing, ready and financially able to execute and comply with this Agreement; has or is eligible to and will sign the applicable local collective bargaining agreement(s) which form the basis for the Schedule A's; and that such Contractor executes, prior to commencement of work, this Agreement or the Letter of Assent. The Unions agree to sign such Contractors.

In contrast, the Toyota agreement does not require that the contractor do more than sign the assent agreement:

TMMTX and/or the Construction Contractor(s) have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Aside from the cases in which the contractor is required to sign the local agreement for all work, the impact of the PLA on the contractor depends on the PLA's terms with respect to the contractor's labor force and benefits payments.

### ***How will a nonunion contractor obtain the labor needed for the project?***

Some nonunion contractors participate in PLA work by operating "double breasted," i.e., by establishing or using a union subsidiary to do the project work. The contractor uses a union workforce, recruits according to union referral rules, and pays into union benefit funds. If the nonunion contractor chooses to participate in this fashion, the only further issue may be bringing key workers in from the nonunion side of the operation.

Where the PLA incorporates a core employee or “drag along” clause, nonunion contractors may bring their own nonunion employees onto the project. Core worker clauses usually require that these employees meet state licensing requirements, are able to work safely, and have worked for the contractor for some minimum time. For example, the contractor may only be able to bring employees who have worked for the contractor for 60 of the last 100 work days. Some clauses allow the contractor to bring as many employees as it needs; others allow the employer to bring in its existing employees in a fixed ratio to the total hired. Under the latter arrangement, a contractor might be allowed to bring one existing employee on for every three hired.<sup>41</sup>

Often, however, the nonunion contractor is required to hire from union sources if it is not able to bring current employees onto the project.<sup>42</sup> The related provision in the Toyota San Antonio PLA states:

- (a) Execution contractors who are not signatory to a current local collective bargaining agreement with a Union having jurisdiction over the affected work may employ core employees, as defined in paragraph (b) below, who are San Antonio residents, as defined in Section 3(b) of this Article, without following the referral in Section 3.
  - a. For purposes of this Agreement, a “core” employee shall:
    - i. possess any license required by state or federal law for the Project work to be performed;
    - ii. have been on the execution contractor’s payroll for at least sixty (60) of the one hundred (100) working days prior to the date the execution contractor received the contract award; and
    - iii. have the ability to safely perform the basic functions of the applicable trade.
    - iv. Upon request of the Union having jurisdiction over the affected work, the execution contractor shall furnish a representative of the Owner with satisfactory evidence of an employee’s qualification as a “core” employee.

The provision for core employees found in the Tappan Zee PLA, often used throughout New York, allows nonunion and out-of-area contractors to bring key workers onto the project:

- B. A Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Project work and who meet the following qualifications as determined by a Committee of 3 designated, respectively, by the applicable Local Union, the Construction Project Manager and a mutually selected third party or, in the absence of agreement, the permanent arbitrator (or designee) designated in Article 7:
  - (1) possess any license required by NYS Law for the Project work to be performed;
  - (2) have worked a total of at least 1000 hours in the Construction craft during the prior 3 years;
  - (3) were on the Contractor’s active payroll for at least 60 out of 180 calendar days prior to contract award;
  - (4) have demonstrated ability to perform, safely, basic functions of the applicable trade.

No more than 12 per centum of the employees covered by this agreement, per Contractor by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number).

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The provision of shop fees, minimum periods, and wage and benefit scales varies. Whether core employees have to pay agency shop fees is controlled by state law. Most PLAs are silent about the provision of evidence that employees have been employed for the minimum period or that wages and benefits in keeping with the union scale are being provided to employees. However, these requirements are likely enforceable under the dispute resolution provisions of the PLA.

### ***Are nonunion workers required to join the union?***

Under the National Labor Relations Act's so-called "construction industry provisos," unions and employers may agree to require "as a condition of employment, membership in [a] labor organization after the seventh day following the beginning of employment or the effective date of an agreement, whichever is later."<sup>43</sup> Depending on state law and the terms of the PLA, nonunion workers may be required to pay union dues or agency fees. In almost all cases, nonunion workers will take home more in wages and benefits than they would from working on projects not covered by a PLA, even after paying agency fees.<sup>44</sup> Where religious beliefs preclude an individual from paying dues to a union, there are established protocols for equivalent contributions to charities.

An example of a dues provision that covers nonmembers is found in Article IV of the PLA for the Suffolk County (N.Y.) Center Building:

#### **SECTION 5. UNION DUES**

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Appendix A Agreement, as amended from time to time, but only for the period of time during which they are performing Covered Work and only to the extent of rendering payment of the applicable monthly union dues uniformly required for union membership in the Signatory Union which represents the craft in which the employee is performing Covered Work. No employee shall be discriminated against at the Project because of the employee's union membership or lack thereof. In the case of unaffiliated employees, the dues payment will be received by the Signatory Union as an agency shop fee.

### ***How will nonunion contractors' employees be provided with benefits?***

### ***How will nonunion and union contractors be provided a level playing field with respect to the cost of benefits?***

Nonunion contractors' benefit plans are typically not as comprehensive, generous, or expensive as those of union contractors. This raises issues about how the employees of nonunion contractors obtain benefit plan coverage while working under a PLA and how the playing field for benefit costs is leveled between union and nonunion contractors. Nonunion contractors have a cost advantage relative to union contractors because of their lower benefit costs. Leveling the playing field, and adhering to the terms of the PLA, requires that nonunion contractors' benefit costs be the same as those of union contractors.

The historic solution to this matter has been to require that nonunion contractors pay into joint labor/management benefit funds. Some nonunion contractors have objected to this system, arguing that, in effect, they are paying twice for their employees' benefits, since they must maintain their own benefit plans while paying into the joint plans. Further, although nonunion workers may benefit from participating in union health insurance plans, there is little gain from short-term enrollment in pension plans. There is also some anecdotal evidence that nonunion employees take advantage of access to the superior coverage provided by union health funds to obtain medical treatments that are not covered or are more costly under their own insurance. Despite considerable discussion of the issue of double payment of benefits (see, for example, Northrup and Alario 1998), actual instances of double payments by open shop contractors working under PLAs are not well documented. This may be, in part, because many nonunion contractors do not provide benefits or do not contribute to those plans. For example, in 2006 only 48% of nonunion construction workers report having health

insurance through their employer; less than 26% report participating in an employment-based retirement plan (CPWR 2009, sections 26 and 27). A survey of larger construction employers by the Associated General Contractors in 2000 found that, although 75% of contractors reported having a 401(k) plan, only half contributed to it (Johnston-Dodds 2001, 37). A 1991 study by the GAO of the Idaho Labs project of the Department of Energy found that, despite many nonunion contractors' stated position that they would not participate in PLA projects, 30% of the 286 contracts for the project went to nonunion contractors (General Accounting Office 1991). Two of the 86 nonunion contractors documented making double benefit payments, and a third was being sued in federal court over a failure to pay at the time the report was issued. Although some instances of double payment of benefits have no doubt occurred since the 1980s, the lack of documented cases in more recent literature suggests that it is uncommon. It is possible that open shop employers are deterred from bidding on PLA projects because, depending on their benefit program and the PLA, they believe that they would have to make double benefit payments.

There are two different methods for administratively leveling the playing field and providing appropriate payments to nonunion workers. The first is that some PLAs require nonunion employers to put the difference between their hourly benefit costs and those paid by signatory contractors into a trust for their employees. The nonunion employee can then draw on the trust to pay insurance premiums, co-pays, and other expenses. The second approach is to put the difference between nonunion and union total compensation into the nonunion employee's paycheck. Both methods level the playing field in terms of benefit costs and avoid the administrative issues (including additional costs) associated with having nonunion workers temporarily participating in joint benefit plans.

### ***Can PLAs be written to allow small and minority businesses to participate in the project?***

Carve-outs or exemptions from the terms and conditions of PLAs are found in some agreements. For example, the Port of Oakland PLA, negotiated in 2000, permits small contractors (those receiving less than \$300,000 in aggregate payments from the project) to be exempted from the terms of the PLA; the total amount of exemption for small and minority businesses was limited to \$15 million (Johnston-Dodds 2001, 43). Such provisions are rare in private sector PLAs. The report *Constructing California: A Review of Project Labor Agreements* shows that only 10% of private sector PLAs had provisions encouraging the participation of small and minority businesses compared to 48% of public sector PLAs. The unions agreed to this provision in the Port of Oakland PLA in part because it was part of a broader program to develop participation from the local low-income community in the area of the port. In this context, the unions were willing to carve out small business exceptions and even extend some valuable privileges to these businesses.

### ***Why would unions agree to provisions that facilitate open shop participation?***

Generally, state and local bidding laws require that public projects be open to all qualified bidders. But beyond the legal requirement, unions may also be open to provisions facilitating nonunion participation in situations where they do not have all the capacity required for a project or where the owner desires the participation of specific contractors who are not signatory to the union agreement. Still, agreeing to nonunion labor or minority and small business carve-outs in a PLA is controversial because it may require that some trades sacrifice while others do not. This can create conflict among building trades locals.

### ***Summary***

All public and many private PLAs allow any contractors to bid on work without regard to their union status. Successful bidders on covered projects are required to sign the assent agreement and maintain union terms and conditions. They may be required to become signatory to the appropriate local collective agreement. Core worker clauses in PLAs allow nonunion contractors to bring qualified employees on their payrolls onto projects. Differences in benefit costs can be addressed by having nonunion contractors pay the difference between union and open shop compensation into a trust

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fund for the use of their employees or pay it directly to their employees in their paychecks. Carve-outs can be used to encourage small business and minority participation in PLAs; they are most often found in PLAs with extensive provisions for community development and social investment.

## **Negotiating PLAs**

PLAs are negotiated by local unions representing the trades involved in a project and the owner or the owner's representative. Because many owners lack experience negotiating contracts, and because of legal requirements as to whom a signatory to labor agreements can be, owners usually delegate the job of negotiating the agreement to the general contractor or construction manager for the project.

Although this arrangement works well in most cases, getting the full value of PLAs for the public requires that the parties to the negotiations be knowledgeable about what can be achieved with PLAs and interested in providing the best outcome possible for the public. Often, however, PLAs are modest documents that do little more than ban work stoppages and commit unions to the prompt provision of labor.

As stated in prior sections, PLAs work best when there is understanding and buy-in from the parties involved in the project. For the same reasons that nationally dictated PLAs do not always elicit the support from local unions needed to address difficult issues, PLAs that only involve some of the parties working on the project may not be as effective as those that bring all parties together. Since parties on both sides of the table may not be well informed about PLAs, bringing in expertise to facilitate the negotiation may be important to attaining the full value from a PLA.

### ***Owners: bringing expertise to bear***

The sophistication of the parties varies widely with prior experience with PLAs, and some regions of the country have much more experience than others. In the New York, San Francisco, and Los Angeles metropolitan areas and the Tennessee Valley, long experience has provided unions, contractors, and owners with a depth of experience that allows them to fashion PLAs that address each stakeholder's concerns and provides substantial value to public and private owners. Similarly, when owners like Toyota have long experience with PLAs, they are able to develop sophisticated agreements. Agreements in regions with less experience with PLAs are typically more basic and achieve less than might have been realized. For example, a 2009 PLA at a university in the Midwest did not include language harmonizing working hours or holidays across trades, forgoing the virtually costless gains from such clauses. For those with less experience, simply turning negotiations over to a construction manager is not always the best solution, since not all construction managers are equally versed in PLAs. Further, the owner and construction manager's interests may not be completely aligned, and any differences need to be considered.

No good general reference currently exists on PLAs and PLA language, although several are being developed. By now, however, thousands of PLAs have been negotiated around the country, and they are a good source for model language. Large private-sector operations (e.g., Toyota and Harvard) and public sector projects (e.g., Boston Harbor and the New York State Thruway) may be particularly valuable. The Federal Mediation and Conciliation Service also offers useful resources and expertise.

### ***Contractors: using a multi-craft labor/management council to develop and promote PLAs***

Because PLAs are typically the product of negotiations between a construction manager and a local building construction trades council, they afford little or no voice for most contractors, particularly specialty contractors. Interviews with contractors and contractors' representatives revealed somewhat ambivalent feelings about PLAs (Belman, Bodah, and Philips 2007, 36-43). That is, contractors saw the benefits of PLAs for scheduling, safety, and training, but they

voiced concern that PLAs were often conceived with little or no input from them. These contractors were then left to worry that PLA terms and conditions could ultimately change or erode provisions of their own agreements. While some unions and union workers have the same essential concerns, they are at least represented at the bargaining table through their BCTC.

One approach to involving contractors is through using a multi-craft labor/management council (LMC). LMCs are typically associations of representatives of unions and union contractors who meet to discuss issues facing their industry and to work together to promote union construction. The activities of these councils vary greatly from region to region. In some areas the councils meet only when issues arise, while others have extensive ongoing activities such as the TRICON labor/management council's *Better Built* in the Peoria, Ill. area. The LMC council can, working with the BCTD's model PLA, create an area model PLA that would provide the general structure for individual PLAs. Of course, like the BCTD's model, the area model should be flexible enough to account for the unique characteristics of each project.

### ***A case study: the Illowa Construction Labor and Management Council's IMPACT Agreement***

Currently, there are scores of construction industry labor/management councils in the U.S., many with a presence on the Internet. A good example of an LMC that has developed and promotes PLAs is the Illowa Construction Labor and Management Council. The Illowa LMC was formed in 1985 to promote union construction in nine counties in Illinois and Iowa. The board of the Illowa LMC has 20 members representing labor and management equally. In 1989, the Illowa LMC created the IMPACT Agreement for use on projects in its region. Over the past 20 years, this agreement has been used on over 230 projects (Belman, Bodah, and Philips 2007).

Among the more important provisions of the IMPACT Agreement, which was developed by labor *and* management, is Article V mandating pre-bid jurisdictional conferences. The purpose of the article is to allow the unions potentially involved to determine work assignments according to craft jurisdiction and to quickly notify bidders of their decisions. The article also provides for a method of dealing with situations where "specialty assignments are made to trade crafts that are not substantially represented by local contractors."<sup>45</sup> Further, Article VIII standardizes holidays and the rate of pay on holidays, which otherwise may differ across collective bargaining agreements. Similarly, Article XI standardizes normal work time and overtime rates, while allowing flexibility in scheduling by mutual agreement. Article X waives all subsistence, travel, and mileage pay. Article XIV requires adherence to local hiring hall provisions, but allows a contractor to hire labor "from any source" if a union is unable to furnish labor within 48 hours of a request. The other provisions of the IMPACT Agreement, such as its strong no-strike/no-lockout clause, are typical of most PLAs.

### ***Starting and maintaining an LMC***

There are essentially two models for multi-craft LMCs. One relies strictly on the voluntary participation of labor and management. Financial support for such councils comes by way of voluntary contributions or dues paid at the organizational level by participating unions, contractors, and contractor associations. The second model is a Taft-Hartley labor/management cooperation trust. Such trusts, which are authorized under 29 U.S.C. § 186 (c) 9 and 29 U.S.C. § 175a(a) (1), allow the parties to negotiate for per capita assessments to support an LMC.

In neighboring jurisdictions in New England, both models are in successful use. The Connecticut Construction Labor-Management Council (CCLMC) is an example of an organization established through a trust agreement and supported through a per capita assessment of \$.10 per hour on covered employment. Seed money for the CCLMC came from a grant from the Federal Mediation and Conciliation Service. Build Rhode Island (Build RI) is a voluntary association of contractors, contractors' representatives, and unions that relies on contributions from members and not a per capita assessment on work. Both organizations have been successful in developing and promoting PLAs in their areas and in achieving results favorable to public and private owners in their jurisdictions.

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## **PLA item checklist**

Although there is still no comprehensive guide to negotiating a PLA, the following checklist could help parties considering the development of a PLA.<sup>46</sup>

1. Purpose
  - If there is a specific date by which the project must be completed, and is it included?
  - Is the need for harmonization of hours and the stabilization of wages mentioned?
  - Is the need for the maintenance of labor peace mentioned along with a dedication to the mutual resolution of disputes?
  - Does the clause contain a no-strike/no-lockout statement?
2. Scope of agreement
  - Is it clear that the PLA is intended only to cover construction work?
  - Is work that is not included clearly stated?
  - Are the various projects and geographic parameters of the site well defined?
  - Does language address site preparation and/or dedicated offsite work?
  - Does the clause clearly state that all contractors, of whatever tier, must accept and be bound by the agreement through a letter of assent?
  - Does the agreement clearly state that the property owner's employees are not covered and the PLA does not create joint-employer status?
  - Is there a supremacy clause stating that the PLA supersedes all other agreements?
3. Union recognition
  - Are the signatory unions recognized as the sole and exclusive representatives of all craft employees?
4. Management's rights
  - Is management specifically given the right to hire, promote, transfer, lay off, or discharge employees, subject only to the provisions of the agreement?
  - Is just cause protection granted?
  - Are restrictions on output, crew size, or the introduction of technology prohibited?
5. Referral of employees
  - Do signatories agree to use the referral procedures maintained by the unions?
  - Is there a provision for unions that do not have an established referral system?
  - Is there a nondiscrimination clause in the agreement?
  - Is there a period (e.g., 48 hours) after which contractors may seek labor from other sources if the union is unable to fulfill a request?
  - Is there language relating to the appointment of foremen?
  - Does the agreement allow for testing or evaluation for those who require special skills?
  - Is there a "key man" or core personnel provision?
  - Is there a clause that prohibits the union from reassigning project employees to another site?
  - Is there a provision for the reemployment of individuals who quit or are terminated for cause, e.g., ineligibility to return to the site for 90 days?
6. Apprentices and trainees
  - Is there language about the employment of apprentices?
  - Does the PLA allow for a uniform journeyman/apprentice ratio?

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- Are helpers, trainees, or other sub-journeymen allowed on the project?
  - Is the ratio of these other trainees defined?
  - Are apprentice or trainee wages defined in the PLA?
  - Does the PLA establish any special program for the recruitment or training of apprentices or other trainees, such as minority or female targeting, or a school-to-work program?
7. Wages and benefits
- Does the PLA contain any direct concessions on wages?
  - Does the PLA contain any direct concession on overtime pay?
  - Does the PLA limit forms of premium pay, such as travel time, high time, etc?
  - Does the agreement limit the joint funds to which contractors must contribute?
  - Does the agreement limit amounts to be contributed to straight-time wages?
8. Work rules
- These are unique to each project, but may include such matters as rules on the use of equipment, smoking, absenteeism, etc. Often this section is used as a residual category for items that do not fit easily into other sections.
9. Work stoppages and lockouts
- Is there strong language prohibiting strikes and lockouts, as well as other types of job actions, e.g., slowdowns?
  - Is striking allowed over certain matters, such as delinquency in payments to joint funds?
  - If striking is allowed, is it limited in any way (e.g., must not be accompanied by picketing, hand billing, etc.)?
  - Is notice required for striking?
  - Is there a procedure for determining if a proscribed job action has occurred, and for enforcing the no-strike/no-lockout clause?
10. Grievances and arbitration
- Does the agreement contain a grievance and arbitration procedure?
  - Are arbitrators named in the PLA?
  - If not, is the source of arbitrators (e.g., AAA, FMCS) defined?
  - Does the agreement define the types of disputes or grievance that are subject to the procedure?
  - Are exceptions made to the grievance/arbitration procedure for industries that have their own settlement procedures?
  - Is the procedure, including the number of steps and individuals involved, clearly defined?
  - Is the employer allowed access to the grievance procedure?
  - Are limits to the arbitrator's authority defined?
11. Jurisdictional disputes
- Does the PLA reference the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry?
  - Is a provision made for parties that are not stipulated to the plan?
  - Are pre-job conferences required to work out jurisdictional issues?

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12. Union security

- Is there a requirement to join the appropriate union within the statutorily defined period?
- Is there a maintenance of membership provision?
- Is an exception made if the project is in a "right-to-work" state?

13. Union representation

- Is provision made for access to the project by union officials?
- Are the rules for union access defined?
- Are rules governing stewards defined?

14. Hours of work

- Is the workday defined?
- Are hours of work standardized across crafts?
- Are break times defined?
- Are any statements about overtime or overtime distribution included?
- Are there provisions for shift work and/or flex time?
- Are uniform holidays specified?
- Are rules concerning the celebration of holidays that fall on weekends defined?
- Is there a provision for make-up time?

15. Subcontracting

- Is subcontracting restricted to those willing to sign a letter of assent?

16. Safety and health

- Are any special safety programs or safety committees specified in the agreement?
- Are employees required to receive special safety training or be certified in particular safety procedures?
- Is a drug and alcohol abuse monitoring or prevention program specified?
- Is immediate dismissal allowed for safety violations?

17. Saving clause

- Does the clause preserve the contract if any particular provision is voided by a court of law?
- Does the clause require the parties to negotiate a substitute agreement for any provision voided under law?

18. Term of agreement

- Are the start and end dates of the project clearly defined?
- Is there a provision for rework or a contractor's subsequent involvement with the project?

## **Summary**

PLAs have historically been an agreement between unions and owners, with contractors only becoming involved in the PLA when they win a project bid. An alternative is for unions and contractors to develop a standard PLA that is then used as the foundation for a final PLA that is negotiated with owners. An advantage of this latter approach is that it is in keeping with the deepening of labor/management cooperation in construction and serves to promote the use of PLAs. Further, as demonstrated in the case of the Illowa Construction LMC, contractors will often use the PLA as a means of marketing their services. Finally, in addition to promoting efficiencies, a model PLA created by unions and contractors may provide a foundation for dispute resolution through an LMC.

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## Conclusion

Although PLAs have been around for years and used on some of the most famous construction projects in American history, their use has become controversial as the nonunion sector of the construction industry has grown and as PLAs have been applied to relatively small projects. Critics argue that PLAs place nonunion contractors at a disadvantage in bidding on projects and raise overall project costs. PLA opponents are particularly critical of the use of PLAs on public projects. They argue that such usage violates the spirit of public bidding statutes by putting the adherence to collectively bargained terms and conditions ahead of best price as a condition for winning a contract.

If designed properly, PLAs can help projects meet deadlines by guaranteeing a steady supply of highly skilled labor and by reconciling the various work routines of the many trades. PLAs also help to assure timely completion by keeping projects free from disruptions resulting from local labor disputes, grievances, or jurisdictional issues. Language in PLAs can be written to advance important policy goals, such as improving training and recruiting members of disadvantaged communities into high-paying jobs in construction.

We hope that this report can move the PLA discussion beyond a debate about whether PLAs are good or bad and toward a more constructive discussion regarding how to create PLAs that help deliver better projects for owners, contractors, workers, and communities.

## Acknowledgments

The authors thank David Weil of Boston University and Harvard University, Pete Stafford and James Platner of CPWR-The Center for Construction Research and Training, John Spavins of the Mayor's Office of Contract Services of the City of New York, Peter Phillips of the University of Utah, and Amy Tracy Wells for their guidance and comments on this paper.

## Endnotes

- 1 See *Federal Register* 75(70): 19168-79.
- 2 For further discussion of this issue, see Weil 2005.
- 3 This is a growing but not a recent problem; see, for example, Business Roundtable 1982. The main trade journal for the construction industry, *Engineering News-Record*, has carried many articles on this topic during the past two decades. The small size and low graduation rates of non-union apprenticeship programs have been documented in several studies, including Government Accountability Office 2005, Belman 2005, Argyres and Moir 2008, Bradley and Herzenberg 2002, and Londrigan and Wise 1997.
- 4 See the series, Unemployment Rate - Construction Industry, Private Wage and Salary Workers Labor Force Status: Unemployment rate: LNU04032231, Bureau of Labor Statistics, U.S. Department of Labor ([www.bls.gov](http://www.bls.gov)).
- 5 See the series, Unemployment Rate, LNU04000000, Bureau of Labor Statistics, U.S. Department of Labor ([www.bls.gov](http://www.bls.gov)).
- 6 See USDL-10-0886, Bureau of Labor Statistics, U.S. Department of Labor, and <http://www.bls.gov/iag/tgs/iag23.htm>.
- 7 For example, despite a 30% growth in employment in construction jobs from 1997 to 2008, real earnings (earnings adjusted for inflation) were unchanged at the median. Over this period, nominal current dollar earnings grew by less than 0.5% annually at the median (employment data from Employment, Hours and Earnings series CES2000000006; Consumer Price Index Series CUUR0000SA0 and CUUS0000SA0 and 1977 and May 2008 *Occupational Employment Statistics for Construction and Extraction Occupations*; all data from [www.bls.gov](http://www.bls.gov)). It is important to note that, because many of these immigrants are not documented, they are not in a position to request the help of public authorities to enforce labor and contracting laws and so are particularly vulnerable to exploitation by unethical contractors.
- 8 These interviews were begun as part of the research, supported by Electri International, that resulted in the Belman, Bodah, and Philips (2007) study. This report provides a summary of many of the interviews along with excerpts from some. The interviews, which are part of the authors' ongoing work on PLAs, have included public and private owners and their representatives; the staff of local, national, and international construction firms; local, regional, and national staff and officials of building trades unions; the staff of employer associations; construction consultants; and construction workers. Regulations regarding research with human subjects preclude us from identifying those interviewed.
- 9 For example, work under a PLA at the San Francisco Airport was reported to be 40 days behind schedule in 1999 because of winter storms in 1997 (see L. Fernandez, "Fewer Stay Out of Work on Day 2 of Strike at SFO," *San Francisco Chronicle*, May 22, 1999).
- 10 See Belman, Bodah, and Philips 2007, 27-28. Additional interviews not included in this report substantiate this point.

- 11 For discussions of delays in projects related to skilled labor shortages, see, for example, *The Beige Book: Summary*, Federal Reserve Board, August 11, 1999; "Craft Labor Shortage Provokes More Studies of Pay and Safety," *Engineering News-Record*, August 20, 2001, p. 11; "Worker Gaps in South Push Up Costs; Ramped-Up Katrina and Power Markets Spur New Labor Alliances," *Engineering News-Record*, October 2, 2006, p. 34; "Attracting and Maintaining a Skilled Construction Workforce," Construction Industry Institute Research Report, 2001; "Needed: Skilled Tradespeople," *Sun-Sentinel*, December 19, 1999; and "Refinery and Petrochemical Plant Construction Costs Reach New High," Cambridge Energy Research Associates, 2007, available at [www.cera.com/asp/cda/public1/news/pressReleases/pressReleaseDetails.aspx?CID=9074](http://www.cera.com/asp/cda/public1/news/pressReleases/pressReleaseDetails.aspx?CID=9074).

In combination with the commitment to the speedy provision of skilled labor, ready access may not always work to the immediate advantage of the local trades workers. Drawing labor from outside a local's jurisdiction will reduce the labor hours available to area tradesmen. At the least, these provisions reduce local unions' ability to bargain over the use of outside labor.

- 12 No references were found in a Lexis-Nexis search conducted in August 2009 to work stoppages occurring on projects built under any PLA from 2000 to 2009. However, there were several articles indicating that work on PLA projects continued through trade-wide work stoppages associated with the renegotiation of contracts over this period. This research is discussed in greater detail in the section on dispute resolution. The authors are aware of a disruption of work on a Trump project in Chicago in 2006. In this instance, laborers left the project on a Friday because there was an area-wide work stoppage associated with the renegotiation of the collective agreement. The disruption was not sanctioned by the local union, and local union leadership attempted to get the employees back to work. No other trades left their work, and the site was not picketed. The workers returned to the site on the next workday. The Chicago Building and Construction Trades Council has taken corrective steps to assure that workers are better informed of their responsibilities under a PLA (phone conversation with T. Villanova, president, Chicago Building and Construction Trades Council).
- 13 Building trades workers working on airport construction struck to express dissatisfaction with a recently ratified contract on May 21, 1999. Union officials were able to end the work stoppage and get workers to resume work in less than 24 hours. Airport officials indicated that the PLA provided a faster and less expensive means of ending the strike than was otherwise available (see L. Fernandez, "Carpenters at Airport Protest Against Union Leadership," *San Francisco Chronicle*, May 21, 1999; "Arbitrator Orders California Carpenters To End Wildcat Strike, Return to Work," *Construction Labor Report*, May 26, 1999; and R.L. Blagenorth, "PLA(ing) with the Truth," Op-Ed Column, *Orange County Register*, July 30, 1999.)
- 14 Problems of coordination of work time and practices across contractors and trades are present throughout construction and are not a feature unique to unionized construction.
- 15 See, for example, Hill International's estimate of the savings associated with using a PLA on the New York State Thruway Project.
- 16 See interviews with the Illowa Construction Labor and Management Council members in Belman, Bodah, and Philips 2007.
- 17 A construction professional at the airport maintained that airlines have been known to sell tickets for departures out of gates yet to be completed.
- 18 Construction unions have ongoing arrangements that, when locals have certified there is work beyond that which they can handle, workers from other locals will be informed of the need for additional workers. Workers seeking employment benefit by access to work, and contractors benefit because they can quickly find workers with appropriate skills. The arrangements also allow for the transfer of pension and benefits funds to the workers' "home" welfare trust and allow for traveling apprentices to continue their training and earning of work-hour credits on the project.
- 19 Approximately 60% of the pipe trades' work was covered by PLA agreements at this time.
- 20 Even parties strongly opposed to PLAs have difficulty finding examples of PLAs that were not completed on time because of labor issues. The Associated Builders and Contractors often cites the delay in the completion of the Milwaukee Stadium as a PLA gone awry, but the description omits important details. The project was initially delayed by the need to reweld improperly constructed roof sections. These sections had been fabricated in Asia and brought to the stadium site, where the improper welds were discovered. Rewelding placed the project behind schedule. The stadium was further delayed when a crane lifting roof sections collapsed during a high wind. Three ironworkers were killed, and there was extensive damage to the stadium because it was struck by the crane and a roof section. A review of the accident revealed that the ironworkers had requested that work be delayed because of high winds but the work was ordered to proceed. Had the ironworkers request been respected, the fatalities might have been prevented, and the stadium might have been completed on time. The delay had nothing to do with the use of a PLA.
- 21 See Lapatner 2007, 34-49 for a recent discussion of this issue.
- 22 A discussion of the interconnectedness between greening the economy and moving disadvantaged groups into the middle class through construction is found in *Rebuilding Our Economy and Rebuilding the Middle Class: A Building and Construction Trades Perspective on Critical Issues of Social Equity, Economic Justice, Environmental Sustainability, Labor Standards, and Workers' Rights* (January 2, 2009).
- 23 Stakeholders include the port representatives, the community, the unions, and employers.
- 24 Interview with Neil Struthers, CEO, Santa Clara and San Benito Counties Building and Construction Trades Council, August 3, 2010.
- 25 The trades included are carpentry/drywall, taping, interior finishes/painting, electrical, plumbing, communication and low voltage cabling, masonry, HVAC, finish carpentry work, and fire protection. A discussion of the training provided to students through the PLA can be found in "Funding Delay in Buffalo School Project Jeopardizing Union Apprentice Program," *Construction Labor Report*, November 19, 2003.
- 26 Based on a 2008 discussion with officers of the Saskatchewan Building Trades Council.

- 27 See <http://www.bls.gov>
- 28 See <http://bls.gov/iif/> for data from 2003 to 2008. Prior data may be obtained from CPWR 2007.
- 29 This list of elements was suggested by Prof. David Weil of the Kennedy School of Government at Harvard University.
- 30 This outstanding record with respect to fatalities and injuries associated with accidents stands in stark contrast to the respiratory illness suffered by WTC rescue and construction workers. These illnesses were caused by breathing in the cloud of toxic materials at and around the WTC site. The most severe exposures occurred immediately following the collapse of the WTC, when the most particulates were airborne. The assurances of the Environmental Protection Agency that the site was safe with regard to respiratory conditions, as well as the failure of other federal and state agencies to identify the well-established dangers of breathing toxic materials at demolition sites, resulted in many workers believing that there were no respiratory hazards.

For example, the first paragraph of an EPA press release on September 13 said that the EPA was "taking steps to ensure the safety of rescue workers and the public at the World Trade Center and Pentagon disaster sites..." (EPA press releases are available at <http://www.epa.gov/wtc/releases.htm>). This was reiterated in third paragraph:

EPA's primary concern is to ensure that rescue workers and the public are not exposed to elevated levels of asbestos, acidic gases or other contaminants from the debris...

EPA is taking steps to ensure that response units implement appropriate engineering controls to minimize environmental hazards, such as water sprays and rinsing to prevent or minimize potential exposure and limit releases of potential contaminants beyond the debris site.

Having taken responsibility for monitoring toxic materials at the World Trade Center site, the EPA continually assured the public and rescue crews that hazards were minimal and appropriate steps were being taken to address those hazards. For example, EPA Administrator Christie Todd Whitman is quoted in a September 18 EPA press release:

We are very encouraged that the results from our monitoring of air quality and drinking water conditions in both New York and near the Pentagon show that the public in these areas is not being exposed to excessive levels of asbestos or other harmful substances...

On September 21, an EPA press release again quoted Whitman reassuring the public:

As we continue to monitor drinking water in and around New York City, and as EPA gets more comprehensive analysis of this monitoring data, I am relieved to be able to reassure New York and New Jersey residents that a host of potential contaminants are either not detectable or are below the Agency's concern levels...Results we have just received on drinking water quality show that not only is asbestos not detectable, but also we can not detect any bacterial contamination, PCBs or pesticides.

The established hazards of working on a demolition site, particularly those caused by inhaling highly base concrete dust laced with a variety of toxic materials, were not discussed; the main emphasis was the effect of dust on aggravating asthma:

...EPA's primary concern has been to ensure that rescue workers and the public are not being exposed to elevated levels of potentially hazardous contaminants in the dust and debris, especially where practical solutions are available to reduce exposure. EPA has assisted efforts to provide dust masks to rescue workers to minimize inhalation of dust. EPA also recommends that the blast site debris continue to be kept wet, which helps to significantly reduce the amount of airborne dust which can aggravate respiratory ailments such as asthma. On-site facilities are being made available for rescue workers to clean themselves, change their clothing and to have dust-laden clothes cleaned separately from normal household wash.

The early failure to inform workers about the well-established hazards of demolition sites and to provide appropriate protection to those working on the site complicated later efforts to implement programs to provide respiratory protection. By the time safety programs were implemented, many of those on the site were resistant to use of appropriate protections. This reluctance may have reflected some fear on the part of rescue and demolition workers to admit, given their high level of exposure, that they may already have suffered respiratory injury.

- 31 This discussion is drawn from "Prevention Efforts and Protection of Worker Health and Safety at the World Trade Center Emergency Project," an unpublished manuscript by Grabelsky (n.d.), and from Colletti, Malloy, Grabelsky, and Platner 2002.
- 32 In contrast, Opfer, Son, and Gambatese (n.d.) found little evidence of a safety effect when examining the Southern Nevada Water Authority (SNWA) project. They compared the recordable incident rate and the lost-workday case incident rate between the construction industry as a whole, the SNWA project, and rates reported by the Construction Industry Institute. While the safety statistics comparing the project with the national construction average looked favorable, the same was not true when the Construction Industry Institute figures were used. The authors suggest that the safety record on the project was not good when one accounts for Kaiser's experience and size and the nature of the project. The differences in the findings between these studies are not surprising. The PLAs had very different emphases on safety and safety language. While the Boston Harbor Project and its PLA provided specific safety language and created safety programs, the SNWA project did little more than reference contractors' existing programs. The differences in outcomes then likely reflect a difference in the importance accorded safety.
- 33 Information on the safety and health program for the Boston Harbor Project and the role played by the Boston Harbor PLA were provided by Joseph Dart, former president of the Massachusetts Building Trades Council, and Joseph Nigro, the lead safety and health representative for the council. The Boston Harbor Project included two large underground and underwater tunnels, one of which extended 9.5 miles offshore, as well as extensive facilities to move waste to the Deer Island Treatment Plant (see Armstrong and Wallace 2001, 3-4).
- 34 Such issues are unlikely to arise when provisions in the PLA or local agreement create a structure, such as standing safety committees, in which safety issues can be addressed expeditiously.

- 35 For example, if a job requires four workers and is being disputed by carpenters and laborers, an arbitrator may assign the work to two carpenters and two laborers (or any combination equaling four), but may not require four carpenters and four laborers.
- 36 Researchers at Suffolk University's Beacon Hill Institute recently studied whether the lack of PLAs on federal government projects during the Bush administration resulted in delays in construction. They could find no evidence of delays during this period (Tuerck, Glassman, and Bachman 2009).
- 37 Union work rules also limit nonunion contractors ability to use independent contractors and restrict their classification of employees.
- 38 As discussed later in this section, the GAO (1991) reports that three of 86 nonunion contractors on Idaho Labs projects made double payments into benefit funds. Other reports discuss the possibility of this occurring, but do not document cases when it occurred.
- 39 Testimony before the Small Business Committee, U.S. House of Representatives, Hearing Transcript 105-63, August 6, 1998, Washington D.C.: U.S. Government Printing Office.
- 40 Discussion with Giz Kaczarowski, director of field service, Building and Construction Trades Department, AFL-CIO (2009), and Mike Haller, Walbridge Construction (2008).
- 41 These clauses are useful both to nonunion contractors and out-of-area union contractors who need to bring key workers onto a project.
- 42 In contrast to its San Antonio PLA, Toyota's 2007 PLA for Blue Springs, Miss. has a core worker provision that allows nonsignatory contractors to bring five current employees who live in the area of the project, or 50% of their workforce, onto the job without regard to use of the union referral system. The union referral procedure must be used for any additional employees.
- 43 Section 8(f)(2) of the National Labor Relations Act. Subsequent court cases have made such union shop clauses difficult to enforce to their fullest extent. See, for example, *NLRB v. General Motors Corp.* 373 US 734 (1963) and *Plumbers Local 141 v. NLRB* 675 F.2d. 1257 (1982).
- 44 Nonunion workers might be worse off economically on projects covered by state prevailing wage laws in states in which the prevailing wage is set to collectively bargained wages and benefits. However, work by Allen Smith (e.g., "Benefits Fraud on Prevailing Wage Jobs: Apprenticeship, Health and Welfare, and Pension," presentation for the CPWR Construction Economics Research Network, 2009) reveals pervasive underpayments in open shops of the benefits required under prevailing wage laws. The enforcement procedures incorporated into PLAs better assure that open shop workers receive full wages and benefits.
- 45 Specialty assignments may occur where the installation of specialized machinery or construction techniques that are unfamiliar to local workers requires bringing in out-of-area employees.
- 46 This checklist also appeared in Belman, Bodah, and Philips (2007).

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Mike Alford asked for details on the amount of compensation received by the Councilmembers, and Mayor Schroder said \$7,200 annually plus medical benefits similar to what City employees have. Mayor Schroder also confirmed that the City has already been reporting the compensation on a regular basis and no changes were proposed.

Seeing no further speakers, Mayor Schroder closed public comment on the item.

Mayor Schroder commented on differences between the City's policies and those of the City of Concord. He did not think Martinez compensation amounts were excessive.

Councilmember DeLaney agreed they were not excessive, but she discussed the need to regularly review and analyze the policies to ensure they are reasonable.

Councilmember Avila Farias agreed with Mayor Schroder. She commented on the number of hours that the Mayor dedicates to the City, and she said she would like to see how Martinez compares with other jurisdictions in regard to what is included as "compensation." She recommended inclusion of travel reimbursement in the budget, when it is related to City business.

17. Discuss and provide direction to staff on Project Labor Agreements for the Waterfront Park Improvement Project. [AG. Simpson/10.05.04]

Interim City Manager Simpson presented the staff report, discussing the purpose and benefits of the agreements.

Councilmember DeLaney asked why the City is considering this on a single project basis, rather than enacting it to apply to all projects that meet certain thresholds, which would simplify the administrative process. Mayor Schroder pointed out that the Waterfront Park project is the only major project that the City will have in the near future.

Mayor Schroder opened and closed public comment on the Item with no speakers coming forward.

Senior City Attorney Veronica Nebb asked if there was a specific threshold amount or should staff set one. Mayor Schorder said he did not have any amount in mind. He suggested looking at other jurisdictions.

Ms. Simpson asked whether planning for the Waterfront Park project should wait until this issue is settled. Public Works Director Dave Scola noted that the construction documents were prepared already, but no amount was set yet. He questioned how changes to this policy might affect the bid process.

Ms. Nebb said she thought it could be as much as a two-month delay.

Following further brief discussion, the Council directed the City Manager and Senior City Attorney Nebb to use a blanket Project Labor Agreement for all projects, provide a specific threshold, with this item brought back to the Council in August at a Special Meeting, if needed.



COMPARISON OF PROJECT LABOR AGREEMENTS UTILIZED BY COUNTY OF CONTRA COSTA TO THAT PROPOSED BY THE UNION<sup>1</sup>

2.1 – The County Template and the Union’s Project Labor Agreement (hereinafter “UPLA”) each apply to construction work pursuant to a contract awarded by the City. In addition, the UPLA applies to:

- work that is “indirectly part of the Project” (such as modular furniture installation; pumps; pump stations) (UPLA 2.3)
- work on systems or subsystems after the Project is completed (UPLA 2.3.1)
- fabrication work over which the City or Contractor possesses the right of control (UPLA 2.3.2)

2.2 The County Template and UPLA each exclude non-technical, non-manual or non-construction employees of the Contractor (UPLA 2.6.3)

2.3 The County Template does not restrict the choice of materials or equipment used on the Project. Additionally, the County Template excludes the deliveries—but not the unloading-- of equipment, apparatus, machinery and construction materials from its coverage. (CA 10.10) It also excludes equipment and machinery owned, controlled or operated by the City. (CA 2.7(a))

The UPLA, by contrast, applies to all deliveries of supplies, materials, and equipment except for supplies, equipment and materials stockpiled for later use. (UPLA 2.3.3).

2.4 The County Template provides that neither the Coordinator, nor the Contractor(s), has any authority (of any kind) to bind the City.

The UPLA does not contain this provision.

2.5 Under the County Template, the City retains the right to perform and to subcontract all portions of the construction and related work on the Project site not covered by the Agreement.

The UPLA, by contrast, applies to all work on the Project site after the Project’s contract has been awarded. (UPLA 2.3, 1.4, 1.5)

2.6 The County Template provides that by signing the Agreement, the parties agree that the working conditions and hours of employment have been negotiated.

The UPLA, by contrast, provides that by signing the Agreement, the parties agree that the working conditions and hours of employment will be governed by the Master Agreements applicable to each craft, copies of which will be on file with the City. (UPLA 9.3)

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<sup>1</sup> Throughout this document, reference is made to the “County Template.” This reference actually refers to the PLA template that the County of Contra Costa utilizes. When the City Council first broached the subject of considering the approval of a PLA, it referred City staff to the County’s PLA policy and agreement template as a potential model for adoption by the City of Martinez.

Additionally, please note that wherever the male pronoun is used in this document, it also is meant to include the female pronoun.

2.7 The County Template specifically excludes all work by employees of the City.

The UPLA, by contrast, includes all city employees whenever the term “City” is used (UPLA 1.2). It permits city employees to perform work on sub-systems and systems after the Project has been completed, however. (UPLA 2.3.1)

2.8 The County Template excludes members of the Elevator Constructors craft from its application, except for Article 5 (the “No-Strike Clause”), Article 6 (“Work Assignments and Jurisdictional Disputes”), and Article 11 (“Grievance Procedures”). Except for these articles, members of this craft are governed by the terms of their National Agreement.

The UPLA contains a similar provision, but also excludes the Stack/Chimney and Cooling Tower crafts. (UPLA 2.3.4)

3.1 All contractors and subcontractors who perform any work on the Project must, as a condition of working on the Project, sign the County Template and perform under its terms. Under 3.4.1, the Contractor must give written notice to the Union(s) of any subcontract on the Project.

The UPLA requires all contractors to provide a copy of the UPLA to their subcontractors and make sure that all subcontractors sign an “Agreement to be Bound” before performing any work. (UPLA 3.2, 3.3) It also makes the agreement a condition of being awarded the contract. (UPLA 19.1)

3.4 The County Template requires that all contractor(s) must include that the subcontractor will observe the wages and working conditions of the Agreement in all of its subcontracts for the Project. The Contractor is also liable for any delinquency in payment of wages or fringe benefits by its subcontractor(s).

The UPLA, by contrast, provides for monitoring and enforcement. It states that the Contractor and the Unions must monitor compliance of the payment of wages and benefits, while the City must monitor and enforce prevailing wage and compliance with the Agreement. (UPLA 11.1)

4.2 The County Template and UPLA each state that the Contractor(s) is alone responsible and liable for its acts, conduct, and for any [alleged] breach, but the County Template includes, additionally, that the Contractor remains liable for its subcontractor(s)’ adherence to the Agreement (CA 3.3) and payment of all wages and benefits. (CA 3.4).

4.3 The County Template and the UPLA state that a signatory Union’s liability under the respective agreement shall be several and not joint. (UPLA 3.5). This means that a union cannot be held liable for another union’s breach of the Agreement.

5.1 The County Template’s “No-Strike Clause” prohibits all labor unrest of any kind on the Project site for the duration of the Project.

The UPLA, by contrast, provides that a union may withhold labor—but not picket—in the event a Contractor fails to deposit into the Trust Funds (make benefit contributions) or to make weekly payroll. Before withholding labor for the failure of the Contractor to deposit into the affected Trust Fund, the union must provide 72-hour notice to the Contractor, during which time the Contractor may cure. For failure to make weekly payroll, the union must provide 24-hour notice to the Contractor and to the City.

The UPLA further provides that the unions are free to participate in labor disruption activities on other job sites regarding disputes with the Contractor over other projects.

5.1.1 The County Template states that, in the event a contractor fails to make its required contribution into an employee Trust Fund, the affected Union may request from the General Contractor that joint checks be issued to the contractor and the affected Trust Fund until the delinquency is satisfied. Should the General Contractor be delinquent with respect to such contributions, the Trust Fund may notify the City, which will then issue joint checks to the General Contractor and the Trust Fund until the delinquency is satisfied.

The UPLA, by contrast, permits the Union(s) to withhold labor, but not picket, when a contractor fails to make a required contribution into a Trust Fund. Before withholding labor, however, the Union must provide 72-hour notice to the Contractor, during which time the Contractor may cure the deficiency. (UPLA 4.1.1)

5.1.2 The County Template provides that the Unions may not participate in any labor unrest in the event a local labor bargaining agreement expires during the Project. Instead, the General Contractor and the affected Union will mutually decide on one of two options:

(a) the affected Union(s) continues to work under the terms of the expired local agreement. It may propose wage and contribution rates, which, if accepted by the Contractor, would apply until such time as a new agreement becomes effective; or

(b) the affected Union(s) continues to work under the terms of the expired contract with no change to the wage and contribution rates. However, if the new contract includes higher wage and contribution rates, the Contractor agrees to make the terms of the new contract retroactive as of the date specified therein.

The General Contractor and the Union(s) may decide between the two options for each affected subcontractor.

The UPLA provides for only one option. The affected Union(s) will continue to work under the terms of the expired local labor contract until a new contract is negotiated. If the new contract's terms are retroactive, the Contractor must agree to implement the new terms within seven (7) days of the effective date of the new contract. (4.1.3)

5.3 The County Template provides that if there is a violation of its "No-Strike Clause," Union officials must act immediately to prevent or cease the labor disruption. The Contractor has the right to replace any Union worker who is participating in such disruption.

The UPLA, by contrast, does not permit the replacement of Union workers who participate in labor disruption activities. Instead, the affected parties are subject to mandatory expedited arbitration proceedings (UPLA 4.2), which include penalties of up to \$10,000 per shift of non-compliance, payable as liquidated damages. Any party may initiate the proceedings by contacting the arbitrator who, in turn, notifies the parties of a hearing date. The hearing cannot exceed 24 hours, with recesses. It is not clear whether this means that the hearing itself cannot last longer than a 24-hour period or whether it must take place within 24 hours. The arbitrator's decision, in writing, must be issued within three (3) hours after the hearing. Either party may request a written opinion from the arbitrator, in which case the

arbitrator has fifteen (15) days. The arbitrator's decision is enforceable by a court of competent jurisdiction, but the arbitrator retains jurisdiction over liquidated damages' disputes. (UPLA 4.2 et seq.)

5.4 The County Template and the UPLA both prohibit the Contractor from "locking out" Union employees. However, the County Template reserves the right of a contractor to terminate, discharge, or lay-off its employees pursuant to its rights under the Agreement and to shut down or suspend work on the Project, or any portion thereof, for any reason.

The UPLA does not contain any analogous provisions.

5.5. The County Template provides that any employee who participates in labor disruption activities is subject to immediate discharge and to the grievance procedures (set forth in Article 11), if invoked.

The UPLA, by contrast, provides for expedited arbitration as already mentioned above. (UCPLA 4.2) To initiate the proceedings, any party may, or in some situations the City must (it's not entirely clear), contact the arbitrator or his/her alternate, who in turn notifies the parties of the hearing date. If neither arbitrator is available, the procedures set forth in UPLA 12.2 are followed instead. Once the hearing is held, the arbitrator has three (3) hours in which to issue his/her written decision. A written opinion of the arbitrator may be requested by either party, which will issue within fifteen (15) days. The request for a written opinion does not delay compliance with the payment of any liquidated damages awarded by the arbitrator. The arbitrator's decision is enforceable by a court of competent jurisdiction, but the arbitrator retains jurisdiction over liquidated damages' disputes.

5.6 The County Template provides that any party may institute binding arbitration for an alleged breach of Article 5, which includes deficiencies in Trust Fund contributions on the part of the Contractor, expiring or expired local bargaining agreements for the applicable crafts, or employer lockouts. If binding arbitration is instituted, the procedure is mandatory. Violations for participating in labor disruption activities resulting in employee discipline or discharge are addressed separately in Section 5.6.8.

The UPLA, by contrast, provides for mandatory binding arbitration on an expedited basis for labor disruption violations and does not contain a provision permitting immediate discharge of an employee. (UPLA 4.2) As in the County Template, the UPLA's binding arbitration procedure also applies to violations of the expired local bargaining agreements and employer lockout provisions.

5.6.1 The County Template provides that the party invoking mandatory and binding arbitration must notify the pre-selected arbitrator or his/her alternate, who, in turn, must conduct a hearing within 24-hours of being contacted. The arbitrator is restricted to determining whether or not a violation has occurred and may not consider issues of mitigation or justification, or award damages. These issues are reserved to a court of competent jurisdiction or to subsequent arbitration proceedings, but the arbitrator may order cessation of a violation or other appropriate relief. The arbitrator's written decision is issued within three (3) hours of the hearing. A written opinion, if requested, must be issued by the arbitrator within fifteen (15) days.

The UPLA's expedited arbitration procedures do not guarantee that a hearing will be held so quickly, in the first 24 hours after being notified. (UPLA 4.2 et seq.) Also, the arbitrator under the UPLA is not restricted to deciding whether or not a violation occurred. He may award the sum of \$10,000 for each shift in non-compliance, and retains jurisdiction over any disputes as to such award.

5.6.5 The County Template and UPLA both state that the arbitrator's award issued pursuant to the expedited arbitration proceedings may be enforced in a court of competent jurisdiction. The County Template further states that initial proceedings may be held ex parte (without the other party's presence).

The UPLA provides that the arbitrator retains jurisdiction over disputes of any award of liquidated damages.

5.6.6 The County Template and the UPLA both provide that any arbitration procedures imposed by law or statute which are inconsistent with those in the respective agreements are waived by the parties. The County Template also requires waiver of inconsistent laws or statutes with respect to injunction proceedings (which applies should the arbitrator's award be subject to court enforcement).

5.6.7 The County Template and UPLA both provide that the costs of arbitration proceedings will be divided equally between the parties. (See UPLA 4.2.7)

5.6.8 The County Template and UPLA each restrict their respective expedited arbitration procedure to alleged breaches involving labor disputes and work stoppages (the "No-Strike Clauses"), the expiration of local labor agreements, and employer lockouts. In the event an employee is subject to discharge or discipline, the County Template requires the parties to follow a grievance procedure set forth in its Article 11.

6.1 The County Template and the UPLA both require all work assignments by the Contractor(s) to be made in accordance with the Plan for Settlement of Jurisdictional Dispute in the Construction Industry (the "Plan").<sup>2</sup> (UPLA 13.1) The County Template requires each Contractor to assign the work assignments in writing. (CA 8.3) Written objections to the Contractor's work assignments may be submitted to the Contractor within ten (10) working days of the mark-up meeting before the Contractor makes the assignments final. (CA 8.3)

6.2 The County Template and UPLA both prohibit any labor disruptions over jurisdictional disputes. (UPLA 13.4) The County Template gives the contractor the right to replace any employee who participates in labor disruption involving a jurisdictional dispute, until the Union returns the employee to work. (6.4) The UPLA, by contrast, provides that anyone who participates in such disruption is subject to immediate discharge. (UPLA 13.4)

6.3 The County Template provides that jurisdictional disputes that are not resolved by the Local Unions will be referred to the International Unions and reduced to writing, and the original work assignments will continue in effect until the dispute is resolved.

The UPLA provides that all jurisdictional disputes must be resolved according to the Plan and, as in the County Template, that work assignments will continue in effect until resolution of the dispute. (UPLA 13.2)

6.3.1 In the event the International Unions involvement does not end the dispute, the matter shall be resolved according to the arbitration procedure set forth in the Plan.

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<sup>2</sup> As of the writing of this document, this Plan has not been reviewed.

The UPLA, by contrast, provides that all jurisdictional disputes must be resolved according to the Plan. There is no interim dispute resolution process (unless such process is included in the Plan).

7.1 The County Template includes a Coordinator whose role is to administer the Agreement and facilitate harmonious relations among the parties. The Coordinator is responsible for conducting monthly meetings between the labor unions and the Contractors (Labor/Management meetings). He or she shall schedule and attend the Pre-job and Mark-up meetings and participate in all discussions pertaining to provisions of the County Template. The Coordinator is not liable for either parties' noncompliance under the Agreement and cannot be made a party in arbitration or court proceedings.

The UPLA does not include a Coordinator but instead provides for a Project Manager, who oversees all phases of the project on behalf of the City. (UPLA 1.7). The Project Manager may, but is not required to attend the pre-job conferences. (UPLA 13.4)

8.1 The County Template provides that during the monthly labor/management meetings, the parties shall also discuss scheduling of and work on the Project.

The UPLA provides that representatives of the Contractor(s), Union(s) and the Project Manager shall hold a pre-construction conference before the commencement of each construction phase. (UPLA 5.1)

8.2 The County Template provides that a Pre-Job conference will occur at the commencement of the Project to establish the scope of each contractor's contract. Safety regulations to be observed during the Project will be mutually agreed-upon during this conference. (CA 9.1(d)) Contracts let after the Pre-Job conference are subject to a pre-job or mark-up meeting at the request of the Union, Coordinator, or Contractors.

The UPLA requires the Contractor and Contra Costa County Building and Trades Council to conduct a pre-job conference before commencing work, which the Project Manager and City may attend if they wish. (UPLA 13.4) The UPLA also requires meetings between the parties before each phase of construction. (UPLA 5.1)

9.1 The County Template includes a list of affirmative rights the Contractor(s) retains under the Agreement, including but not limited to, the right to plan, direct and control the operation of the work, to decide the number and type of employees necessary to complete the work safely and efficiently, to insist that employees observe the safety regulations, to decide whether to initiate drug testing of employees, to assign and schedule its employees' work, including overtime, to use and select any work methods, procedures, or techniques and any type or kind of materials, apparatus, or equipment, except as required by the Project documents.

The UPLA includes no such list, although the following rights are provided:

- The Contractor has the right to reject any applicant referred by the Union(s), in accordance with the applicable local bargaining agreement, in filling craft job requirements. (UPLA 8.1)
- The Contractor has the right to select and hire all supervisors above general foreman. (UPLA 8.2)
- The Contractor retains full and exclusive authority for the management of its operations, including the right to direct its workforce in its sole discretion. (UPLA 15.1)

10.1 The County Template gives the Contractor the right to choose its craft and General Foremen, giving consideration to local qualified individuals and in accordance with the Craft's local bargaining agreements. Foremen and General Foremen must take orders from the Contractor's designated representatives.

The UPLA, by contrast, gives the Contractor the right to select and hire all supervisors above the level of general foreman without such persons being referred by the Union(s). (UPLA 8.2).

10.2 The County Template prohibits the placement of production limits or restrictions on tool use on a Contractor's employees. Craft persons using tools must perform their trade work under the supervision of the craft foremen.

The UPLA, by contrast, contains no similar provision. Because subjects not covered by the UPLA are governed by any applicable local bargaining agreements, provisions in those agreements would need to be checked to confirm whether or not there is any inconsistency.

10.3 The County Template provides that the Contractor is responsible for the security procedures for the control of tools, materials, and equipment.

10.4 The County Template provides for a check-in/check-out procedure at the option of the Contractor. If used, the Contractor must provide for an expeditious procedure and employees must personally check in or out.

10.5 The County Template provides that employees must be on location and ready to work at the starting time and must remain working on their assigned tasks until quitting time. Employees will have a reasonable time to put company and personal tools in secured storage to allow them to return to the parking lot by quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.

The UPLA, by contrast, contains no such provision.

10.6 The County Template provides that slowdowns, standby crews and featherbedding will not be tolerated.

The UPLA provides that there will be no labor disputes of any kind for any reason. (UPLA 4.1.1)

10.7 The County Template provides that the Contractor's employees will have no concern for or interference with City employees or others whose work is not covered by the Agreement, including maintenance and operations workers.

The UPLA, by contrast, contains no such provision.

10.8 The County Template provides that rest periods will be in accordance with Wage Order 16. Workers will be permitted to consume the contents of their personal thermos bottles during work hours.

The UPLA, by contrast, states that such matters are governed by each craft's Master Collective Bargaining Agreement.<sup>3</sup> (UPLA 1.8, 3.6, 9.3)

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<sup>3</sup> As of the preparation of this document, this agreement has not been reviewed.

10.9 The County Template provides that the foremen must remain on the work site and supervise their crews.

The UPLA does not address this subject, unless it is addressed in a Master Collective Bargaining Agreement, in which case those terms apply. (UPLA 9.3)

10.11 The County Template provides that the Contractor must provide for tool storage, sanitary facilities, and clean, heated, and dry change rooms. The Contractor will not be liable for any thefts or damages to any stored tools, however.

The UPLA contains no such provision.

10.12 The County Template and UPLA both provide that the lawful manning provisions of the Craft local agreements will be recognized, and that any rules, customs or practices that cause over manning, limit production or increase the time required to do the work are prohibited. (UPLA 15.1) The County Template adds that there are no restrictions on the use of machinery, tools or labor-saving devices, except as required by the Project documents or accepted construction practices.

10.13 The County Template provides that employees required to work more than ten (10) consecutive hours will receive a one-half hour lunch period with pay and meals (or a meal allowance of \$10.00) at the expense of the Contractor(s). For each additional four (4) hours worked, the employees will receive the same again.

11.1 The County Template and UPLA both provide that all disputes regarding the application or interpretation of the County Template are subject to a grievance procedure if brought to the other party's attention within five (5) working days of the event causing the dispute. (See UPLA 12.1) Disputes over the "No-Strike," employer lockout, or expired local bargaining agreement provisions contained in Article 5 are governed exclusively by the expedited arbitration procedures in Article 5, unless the dispute involves the discharge or discipline of an employee for violations of those provisions. (CA 5.6.8 and UPLA 4.2.1) All other disputes are governed by the applicable local bargaining agreement(s). (UPLA 13.1, by contrast, provides that disputes over work assignments and jurisdiction are governed by the Plan.)

11.2 The County Template provides that either party may invoke the grievance procedure, but it is only available if invoked within five (5) working days from the date of the grievance. Once invoked, it is mandatory. (CA 11.4)

The UPLA, by contrast, provides that a party has up to thirty (30) days from the time it should have reasonably been aware of the event causing the grievance to initiate the grievance procedure. (UPLA 12.1)

11.3 The County Template and UPLA both provide that the grievance shall be settled by following Steps 1 through 4. (UPLA 12.2) Step 1 involves discussions between the grievant, the steward or business representative, and the applicable craft supervisor. If the parties do not settle their grievance within five (5) working days, they proceed to Step 2, which requires them to reduce their grievance to writing and refer it to the affected Contractor and Union, who have five (5) working days to discuss and attempt to resolve the matter. If the grievance remains unresolved, Step 3 provides that either party may,

within five (5) working days, submit the grievance to arbitration. Step 4 describes how the arbitrator will be chosen.

11.4 The County Template and UPLA provide that the arbitrator's decision will be confined to the question(s) posed by the grievance and the arbitrator has no authority to modify amend, alter, add to, or subtract from, any provisions of the agreement. UPLA 12.2) The County Template provides, additionally, that if either party, after proper notice of the hearing, fails or refuses to participate, the arbitrator must issue a default award against that party. Both the County Template and the UPLA provide that the Arbitrator's decision is final and binding and that the costs of arbitration are split evenly between the parties. (UPLA 12.2)

The UPLA adds that Steps 1 and 2 are not precedent setting in order to encourage the parties to resolve their dispute. (UPLA 12.2) It also provides that when a grievance is submitted to the grievance procedure, the Union(s) may request withholding against the Contractor(s) of an amount sufficient to cover the damages alleged, should the Union(s) prevail. (UPLA 12.2) This retention will be held by the City until the matter is resolved or an order to release it is issued. (UPLA 12.2)

11.5 The County Template and UPLA both provide that any of the time limits mentioned in the grievance procedures may be extended upon mutual written agreement of the parties. The UPLA adds, however, that the failure by a party fail to respond within the prescribed time limits without an extension shall constitute a waiver without prejudice to that party. (UPLA 12.2)

12.1 The County Template provides that employees must pay all dues and fees required for Union membership and that all employees will be governed by the union security clause in the applicable craft's local bargaining agreement.

The UPLA states that all of the Contractor(s)' employees working on the Project are required to become members and maintain membership in the appropriate Union or before eight (8) days of consecutive or cumulative employment on the Project. (UPLA 7.2)

12.2 The County Template and UPLA both provide that the Contractors must recognize the signatory unions as the sole and exclusive bargaining representatives of the craft employees on the Project. (UPLA 7.1)

12.3 The County Template provides that Union representatives will have access to the Project site during established working hours, but must not interfere with the work of the employees.

The UPLA, by contrast, states that Union representatives will have access to the Projects whenever work is being performed. (UPLA 7.3)

12.4, 12.5, 12.6 The County Template provides that the Union's authorized representative must appoint a working journeyman as Steward, whose duties will be assigned by the Union's Business Manager or Business Agent. The Steward will be paid at the journeyman wage for his classification, but will be permitted to perform his/her duties during work hours if it is not possible to perform them at other times. The Steward will be allowed a reasonable time to perform his duties but they must be performed as expeditiously as possible. The duties will not relate to referral or hiring. The Steward cannot leave the work area without notifying the appropriate supervisor. The Steward shall be treated in accordance with the craft local bargaining agreement applicable to the journeyman's classification.

The UPLA, by contrast, contains no such provision.

13.1 The County Template and UPLA each require the Contractor(s) to use the Union's registration facilities and referral systems in filling craft job vacancies. (UPLA 8.1) Both agreements give the Contractor(s) the right to reject any applicant.

13.2 The County Template and the UPLA give the Contractor(s) the right to select and hire directly all supervisors above general foreman without such persons being referred by the Union(s). (UPLA 8.2)

13.3 The County Template and the UPLA give the Contractor(s) the right to obtain employees from any source if the Union(s)' referral facilities are unable to fill the requested position within a 48-hour period, excluding Saturdays, Sundays, and holidays. (UPLA 8.3)

The UPLA contains no such provision.

13.4 The County Template provides that the Unions must exert their utmost efforts, including requesting assistance from other Local Unions, to recruit sufficient number of skilled craftspersons to fulfill the labor requirements of the Contractors.

The UPLA contains no such provision.

13.5 The County Template provides that the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

There is no analogous provision in the UPLA.

14.1 The County Template and UPLA both contain an anti-discrimination clause.

15.1 – 15.3 The County Template and UPLA's provisions governing the hiring of apprentices are analogous. (UPLA Article 14)

16.1 The County Template and UPLA provide that employee classification and pay (or, in the UPLA, wages, hours, and terms of employment) are governed by the applicable local bargaining agreement for each craft. (UPLA 9.3)

16.3 The County Template and UPLA both provide that the Contractors are bound by the terms of established local trust agreements, which dictate payments and benefits paid into and out of the employee benefit funds. (UPLA 9.1, 9.2) The County Template and UPLA also include similar provisions regarding the appointment and succession of the trustees who administer those funds.

16.4 The County Template provides that wages will be paid to all employees weekly, not later than on Friday, and not more than three (3) days' wages may be withheld and shall be paid before the end of the work shift. Payment shall be made by check with detachable stub.

The UPLA provides that wages and terms of employment are governed by the applicable local bargaining agreement. (UPLA 9.3)

16.5 When an employee is discharged, the employee shall be paid wages due immediately. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

The UPLA provides that wages and terms of employment are governed by the applicable local bargaining agreement. (UPLA 9.3)

17.1 The County Template provides that unless General Prevailing Wage Determinations provide otherwise:

- the work week will start on Monday and conclude on Sunday;
- eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the shift;
- forty (40) hours per week, Monday through Friday, will constitute a regular week's work; and
- eight (8) hour work days and forty (40) hour work weeks are not guaranteed.

The UPLA provides that the terms of the applicable local bargaining agreement control. (UPLA 9.3)

17.2 The County Template provides that overtime will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code.

The UPLA provides that the terms of the applicable local bargaining agreement control. (UPLA 9.3)

17.3 The County Template provides that the Contractor(s) shall have the right to establish the work shifts.

The UPLA provides that hours and terms of employment are governed by the applicable bargaining agreement. (UPLA 9.3)

17.3.1 The County Template provides that if two (2) or three (3) shifts are worked, the first shift will consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period, the second shift shall consist of seven and one-half (7 1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the third shift shall consist of seven (7) hours of continuous work exclusive of a one-half (1/2) non-paid lunch period for eight (8) hours pay.

The UPLA provides that hours and terms of employment are governed by the applicable local bargaining agreement. (UPLA 9.3)

17.3.2 The County Template provides that shift work may be performed for a period of at least five (5) consecutive working days at the option of the Contractor(s). The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth consecutive day.

The UPLA provides that hours and terms of employment are governed by the applicable local bargaining agreement. (UPLA 9.3)

18.1 The County Template provides that holidays will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code

The UPLA, by contrast, provides that holidays will be in compliance with the local bargaining master agreement.<sup>4</sup> (UPLA 9.—*should be 9.4*)

19.1 The County Template provides that in the event an employee reports for work and is not given any work, the employee will be paid two (2) hours pay at the regular straight time hourly rate unless previously told not to report for work. Any employee who starts work shall receive at least four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.

The UPLA provides that hours and wages are governed by the applicable local bargaining agreements. (UPLA 9.3)

19.1.1 The County Template provides that whenever minimum reporting pay is provided, employees must remain at the project site available for work, unless released sooner by their supervisor or designated representative.

The UPLA provides that hours and terms of employment are governed by the local bargaining agreements. (UPLA 9.3)

19.1.2 The County Template provides that where the employee voluntarily quits, the employee will only be paid for actual time worked.

The UPLA provides that wages, hours, and terms of employment are governed by the local bargaining agreements. (UPLA 9.3)

19.2 The County Template provides that in the event of an emergency that could endanger life or property, the City or Contractor(s) may shut down. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Owner or Contractor(s) request employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

The UPLA contains no similar provision.

20.1 The County Template provides that travel, subsistence and zone pay will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code.

The UPLA provides that wages are governed by the applicable local bargaining agreements. (UPLA 9.3)

21.1 The County Template provides that employees of the Contractor(s) are bound by the safety rules and regulations established by the City and Contractor(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.

The UPLA contains no such provision. If a similar provision exists in the local bargaining agreements, that provision would govern. (UPLA 3.6)

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<sup>4</sup> As of the preparation of this document, this master agreement has not been reviewed.

21.2 The County Template provides that each Contractor will have the exclusive responsibility to assure safe working conditions for its employees in accordance with OSHA/Cal-OSHA. Additionally, each Contractor must assure that its employees comply with any safety rules contained in the agreement or established by the contractor(s). Neither the Union(s) nor owner will be liable to any employee or other persons in the event that injury or accident occurs.

The UPLA contains no such provision. If a similar provision exists in the local bargaining agreements, that provision would govern. (UPLA 3.6)

21.3 The County Template provides that a convenient supply of cold and potable drinking water shall be provided by the Contractor(s).

The UPLA contains no such provision.

21.4 The County Template and UPLA both provide that the Contractor(s) and Union(s) will abide by the substance abuse policy contained in the respective Master Collective Bargaining Agreements for the affected crafts. (UPLA 17.2)

22.1 The County Template provides that the Contractor(s) will be solely responsible for security procedures for the control of tools, equipment and materials.

The UPLA contains no such provision.

22.2 The County Template provides that all employees will comply with the security procedures established by the Contractor(s) and the Owner.

The UPLA contains no such provision.

22.4 The County Template provides that violations for failure to comply with the City's Security Regulations while on the Project jobsite may result in termination and/or exclusion from the Project jobsite.

The UPLA contains no such provision.

23.1 The County Template and UPLA provide that call-ins will be governed by the applicable craft collective bargaining agreement.

The UPLA contains no such provision.

24.1 The County Template provides that it represents the complete understanding of the parties but shall not affect the validity of the City's Project documents. In the event of conflict between this Agreement and the Project documents, the Project documents will take precedence.

The UPLA, by contrast, provides that the UPLA and the local collective bargaining agreements of the Signatory Unions apply to the work governed by the agreement, notwithstanding any conflict with local or national agreements. In case of a conflict between the UPLA and a local collective bargaining agreement, the terms of the UPLA prevail. Subjects not covered by the UPLA which are covered by a local collective bargaining agreement are governed by the local agreement. (UPLA 3.6)

24.2 The County Template provides that it covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of the agreement, neither the Contractor(s), nor the Union(s) will be required to negotiate on any further matters affecting these or any other subject not specifically set forth in the agreement except by mutual agreement of the Unions involved and the Coordinator.

The UPLA, by contrast, provides that wages, hours, and terms of employment shall be governed by the local collective bargaining agreements. (UPLA 9.3)

24.3 The County Template provides that any other agreement or modification of the agreement must be reduced to writing and signed by the Coordinator and the Unions involved.

The UPLA contains no such provision.

25.1 The County Template and UPLA both provide that in the event any Article or provision of the agreement is declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity, but the remainder of the agreement will remain in full force and effect. (UPLA 18.1) Further, should any or all provisions of the agreement be finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties.

25.2 The County Template and UPLA both provide that in the event a decision of a Court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement will be null and void. (UPLA 18.2)

26.1 The County Template provides that it becomes effective on the day the Owner awards the first contract covered by the scope of this Agreement and continues in full force and effect until completion of the scope of the Project. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

The UPLA becomes effective on the same date, but does not provide a termination date. (UPLA 19.2) Rather, it requires the City and the Contra Costa County Construction and Building Trades Council to meet and confer on an annual basis to discuss the parties' experiences under the agreement and its applicability to other and future projects.

The UPLA contains provisions not included in the County Template nor mentioned above. These are:

Section 8.4, Local Hiring

Article 16, "Helmets to Hardhats"

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# Project Labor Agreements: What You Need To Know

BY LAN WANG



DMITRY KALINOVSKY/SHUTTERSTOCK

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## **About Legal Notes**

*This column is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.*

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As a result of the Great Recession and drastically reduced revenues, many cities in California are facing unprecedented budget crises.

In awarding municipal contracts, one important consideration is to get the product, service or construction of a public project at the lowest cost. To that end, cities as well as other public entities are generally required to put significant contracts out for competitive bidding and to award the contract to the lowest responsible bidder.<sup>1</sup> Sometimes a decision

is made to require a Project Labor Agreement (PLA), typically described as a pre-hire collective bargaining agreement with one or more labor organizations that establishes terms and conditions of employment for a specific construction project or projects.<sup>2</sup>

PLAs, also known as Project Stabilization Agreements, are specific to the construction industry because of its unique conditions, including the short-term nature of employment that makes post-hire collective bargaining difficult, the contractor's need for predictable costs and a steady supply of skilled labor, and a longstanding custom of pre-hire bargaining in the industry.<sup>3</sup>

PLAs are controversial and part of a 200-year-old tradition of dispute about the role of trade unions in America.<sup>4</sup> In this case, the dispute comes primarily from non-union contractors, who object to PLA requirements that they obtain their labor force from a union hiring hall and who argue that PLAs increase construction costs.<sup>5</sup>

On Oct. 2, 2011, Gov. Jerry Brown signed SB 922 (Steinberg) into law (Chapter 431, Statutes of 2011), which prohibits a charter provision, initiative or ordinance from preventing the governing board of a local public entity<sup>6</sup> (other than a charter city) from considering a PLA on a project-by-project basis. However, for charter cities that ban PLAs that meet SB 922's provisions, the law withholds state funding for such projects.

The governor's message on signing SB 922 was: "I am signing Senate Bill 922 to prohibit bans on Project Labor Agreements (PLAs). Contrary to what the opponents claim, this bill does not require any local government to adopt a PLA. In fact, this bill preserves the right of all sides to debate what obviously is a hotly contested issue. Seems fair to me — even democratic."<sup>7</sup>

### **About Project Labor Agreements**

Although PLAs have many complex features, the most significant condition in most PLAs is that the unions agree not to strike or engage in other disruptive activities, and the contractors and their subcontractors agree to no lockouts for the duration of the construction project.<sup>8</sup>

Other typical terms of a PLA include:

- Employer or contractor recognition of a particular union or group of unions as the exclusive collective bargaining agent(s) for all employees on the project;
- A promise by the employer or contractor to hire exclusively from union hiring halls, provided that the union controlling this employee referral system may not discriminate on the basis of a worker's union or non-union status;
- A requirement that new employees, within a certain period of time, pay dues to the union for representing their interests before the employer or contractor;
- Provisions related to management's rights; and
- Grievance procedures, wages, hours, and working conditions and schedules, including whether work will take place on weekends and holidays.<sup>9</sup>

### **The Debate Surrounding PLAs**

The history of PLAs in the United States began with several dam projects in the 1930s, including Shasta Dam in California<sup>10</sup> and Hoover Dam in Nevada. However, PLAs remain controversial.

Seven localities in California have banned the use of PLAs. Voter-approved initiatives have banned PLAs in San Diego County and in the cities of Chula Vista and Oceanside.<sup>11</sup> Ordinances adopted by the Fresno City Council and boards of supervisors in Orange County, Placer County and Stanislaus County also ban PLAs.<sup>12</sup>

The main argument made by advocates to use PLAs in public sector construction is that PLAs reduce the risk of construction delays and increased costs caused by worker shortages or labor disputes, due to the no-strike provisions

and the use of centralized referral systems or hiring halls to obtain workers.<sup>13</sup> Advocates also maintain that PLAs foster positive communication channels to address worker concerns, grievances or disputes and resolve them quickly, thereby creating workforce continuity and stability at the job site.<sup>14</sup>

Opponents of PLAs argue that they limit competition, raise costs and favor union over non-union contractors and workers.<sup>15</sup> Opponents characterize PLAs as union-only agreements, which make it more difficult for non-union workers to gain employment. Non-union contractors tend to prefer not to be bound by PLAs because these agreements force the non-union contractor to essentially act as a union contractor for the duration of a project by requiring the contractor to pay union wages and contribute to union benefit plans, rather than funding their own plan, and to be bound to unions that are traditionally hostile to them.<sup>16</sup>

### Legal Considerations

Opponents of PLAs have challenged the right of public entities to use PLAs in public sector construction on two bases: first, pre-emption under the National Labor Relations Act (NLRA); and second, alleging violation of state or local competitive bidding requirements that require public construction contracts to be awarded to the lowest responsible bidder.

Regarding the NLRA pre-emption, the U.S. Supreme Court has affirmed that public entities have the same options as private owners in deciding to use PLAs in construction projects.<sup>17</sup> The NLRA explicitly permits employers in the construction industry — but no other — to enter into pre-hire agreements.<sup>18</sup> In enacting exemptions authorizing PLAs in the construction industry, Congress intended to accommodate conditions specific to the industry, and the court saw no reason to expect that the construction industry's defining features should depend upon the public or private nature of the entity that is purchasing the contracting services. "To the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity *as purchaser* should be permitted to do the same."<sup>19</sup> Therefore, PLAs that are included as bid specifications for public construction contracts are not pre-empted by the NLRA.

Regarding the allegation that PLAs violate state or local competitive bidding requirements, the various state courts tend to follow similar patterns.<sup>20</sup> First, they consider the nature and scope of the project to determine whether the project is such that a PLA might facilitate the completion of the project at the lowest cost and with the best work.<sup>21</sup> The courts seek to understand whether this is simply a routine project where a PLA might be desirable although not necessary, or whether it is a project of sufficient size, scope, complexity or duration that a PLA is in fact needed.<sup>22</sup>

Second, the courts tend to evaluate the agreement itself and the process through which the awarding authority came to see the PLA as necessary.<sup>23</sup> The courts, recognizing that these agreements by their very nature limit competition, look to see whether the PLA serves the broader objectives and purposes of the given state's or local public entity's competitive bidding laws.<sup>24</sup> The courts tend to consider why the awarding authority sought a PLA, what goals that authority thought the PLA would serve and whether the drafted language would serve to minimize the agreement's negative effect on competition.<sup>25</sup>

Consistent with the pattern of analysis noted here, the California Supreme Court has held that PLAs do not violate competitive bidding law and found the use of a PLA to be valid in a public construction project to expand and renovate the San Francisco International Airport.<sup>26</sup> The court observed that the purposes of competitive bidding laws are to secure competition, save public funds and guard against favoritism, improvidence and corruption.<sup>27</sup>

The court concluded that substantial evidence supported the adoption of the PLA bid specification as advancing legitimate governmental interests consistent with competitive bidding laws, including prevention of costly delays and ensuring contractors have access to skilled workers.<sup>28</sup> Because the PLA, by its own terms, did not exclude contractors,

union or nonunion, from bidding on the airport project, the court found that it was not anticompetitive.<sup>29</sup> With respect to the San Francisco International Airport project, the substantial evidence that supported adoption of the

PLA bid specification included:

- The expected 10-year duration of the project;
- Seventy-seven separate construction contracts interrelated by time and effect;
- An increased project administration cost of \$1.5 million for every month of delay, as well as a \$13 million loss of revenue for the public entity; and
- An unquantifiable loss of tourist revenue to San Francisco that would be caused by delays.<sup>30</sup>

Finally, the court observed that future challenges to the imposition of PLAs as bid requirements must be reviewed on a case-by-case-basis for consistency with competitive bidding laws.<sup>31</sup>

### Conclusion

Any public entity considering the adoption of a PLA bid specification must do so on a case-by-case basis, bearing in mind the competitive bidding laws and the project's specific facts, such as size, scope, complexity, time sensitivity and the costs of delay. Additional considerations include SB 922's prohibition of blanket bans of PLAs by public entities other than charter cities and the fact that for charter cities that have banned PLAs that meet SB 922's provisions, the state withholds funding for such projects.

### Footnotes:

<sup>1</sup>Public Contract Code § 20162. Section 20162 requires competitive bidding on public work contracts when the expenditure exceeds \$5,000. Charter cities that may not be subject to this statute typically have similar requirements in their charters or municipal codes. A bidder is responsible if it can perform the contract as promised. A bid is responsive if it promises to do what the bidding instructions require. *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359, 368.

<sup>2</sup>See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, (1999) 21 Cal. 4th 352, 359; *Associated General Contractors of America v. San Diego Unified School Dist.* (2011) 195 Cal. App. 4th 748, 753-754, 763 (finding use of a PSA, which included a requirement that bidders on certain of school district's construction projects employ apprentices trained in a joint labor-management apprenticeship program, valid).

<sup>3</sup>*Bldg. & Constr. Trades Council v. Associated Builders & Contrs.* (1993) 507 U.S. 218, 231.

<sup>4</sup>"Constructing California: A Review of Project Labor Agreements," p. 2, by Kimberly Johnston-Dodds (California Research Bureau, California State Library 01-010 October 2001). The author of this column takes no position on the debate over PLAs.

<sup>5</sup>Id.

<sup>6</sup>"Public entity" means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state. Public Contract Code § 1100.

<sup>7</sup>SB 922 takes effect January 1, 2012. SB 922 provides a caveat for the provision related to withholding state funding: this provision does not become applicable until January 1, 2015 for charter cities that had bans in place prior to November 1, 2011.

<sup>8</sup>3 U. Pa. J. Lab. & Emp. L. 295, 298 (2001) (COMMENT: Project Labor Agreements and Competitive Bidding Statute); "Constructing California: A Review of Project Labor Agreements," *supra*, at pp. 1-3.

<sup>9</sup>3 U. Pa. J. Lab. & Emp. L., *supra*, at 298; see also the standard PLA developed by the Building and Construction Trades Department, AFL-CIO, ("BCTD"), which can be found at: <http://www.bctd.org/Field-Services/Project-Labor-Agreement.aspx>; "Constructing California: A Review of Project Labor Agreements," pp. 3-4, 14-36 by Kimberly Johnston-Dodds (California Research Bureau, California State Library 01-010 October 2001).

<sup>10</sup>"Constructing California: A Review of Project Labor Agreements," *supra*, at pp. 9-10.

<sup>11</sup>SB 922 – Bill Analysis.

<sup>12</sup>Id.; see also "Project Labor Revolt," Review & Outlook, July 19, 2011, *The Wall Street Journal*.

<sup>13</sup>"Constructing California: A Review of Project Labor Agreements," *supra*, at p. 57; see also 3 U. Pa. J. Lab. & Emp. L., *supra*, at 322, 327-328.

<sup>14</sup>"Constructing California: A Review of Project Labor Agreements," *supra*, at p. 59.

<sup>15</sup>3 U. Pa. J. Lab. & Emp. L., *supra*, at 323.

<sup>16</sup>Id.

<sup>17</sup>*Bldg. & Constr. Trades Council*, *supra*, at 231-233.

<sup>18</sup>Id., at 230-231.

<sup>19</sup>Id., at 231 (*italics in original*).

<sup>20</sup>3 U. Pa. J. Lab. & Emp. L. 295, *supra*, at 321.

<sup>21</sup>Id.

<sup>22</sup>Id.

<sup>23</sup>Id.

<sup>24</sup>Id.

<sup>25</sup>Id.

<sup>26</sup>*Associated Builders & Contractors, Inc.*, *supra*, at 358, 369-376. As a charter city, San Francisco enjoys autonomous rule over municipal affairs. The California Supreme Court did not have to determine whether state or local competitive bidding law applied because there was no conflict between state law and the San Francisco Administrative Code. Public Contract Code § 20128 required award to the "lowest responsible bidder," and the San Francisco Administrative Code § 6.1 used the formulation "lowest reliable and responsible bidder." Because there was no conflict, and therefore it would not have had an effect on the outcome of the case, the court did not determine whether the inclusion of the PLA in the airport project bid request involved a matter of statewide concern. Id., at 363-365.

<sup>27</sup>Id., at 373.

<sup>28</sup>Id., at 373-374.

<sup>29</sup>Id., at 367.

<sup>30</sup>Id., at 358, 373-374.

<sup>31</sup>Id. at 376.

**MASTER PROJECT LABOR AGREEMENT  
FOR THE CITY OF MARTINEZ**

**INTRODUCTION/FINDINGS**

This Master Project Labor Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Martinez (hereinafter, the "City"), together with contractors and/or subcontractors, who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Addendum A) (all of whom are referred to herein as "Contractors/Employers"), and the Contra Costa County Building & Construction Trades Council ("Council") and its affiliated local Unions that have executed this Agreement (all of whom are referred to collectively as "Unions").

The purpose of this Agreement is to promote efficiency of construction operations for the City of Martinez and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project. The City and the Council may mutually agree in writing to add additional components to the Project's Scope of Work to be covered under this PLA.

WHEREAS, the timely and successful completion of the Project is of the utmost importance to the City to avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the Unions signatory to this Agreement and employed by contractors and subcontractors who are signatory to this Agreement; and

WHEREAS, it is recognized that on a Project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions and the

Contractor/Employers would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractor/Employer(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this agreement is to avoid the tensions that might arise on the Project if Union and nonunion workers of different employers were to work side by side on the Project, thereby leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor/Employer(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contracts for the construction of the Project will be awarded in accordance with the applicable provisions of the California State Public Contract Code and state, local and federal laws and regulations; and

WHEREAS, the City has the absolute right to select the lowest responsive and responsible bidder for the award of construction contracts on the Project; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

**ARTICLE I**  
**DEFINITIONS**

1.1 “Agreement” means this Master Project Labor Agreement.

1.2 “City” means the City of Martinez and its public employees, including managerial personnel.

1.3 “Contractor/Employer(s)” or “Contractor” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and has entered into a contract with the City or Project Manager or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by the City and which incorporate this Agreement.

1.4 “Construction Contract” means the public works or improvement contracts awarded by the City after execution of this Agreement, and all contracts and subcontracts executed thereunder, that are necessary to complete the Project.

1.5 “Project” means any City construction project funded in whole or in part with City of Martinez funds. The City and the Council may mutually agree in writing to add additional components to the Project’s Scope of Work to be covered under this PLA.

1.6 “Union” or “Unions” means the Contra Costa Building and Construction Trades Council, AFL-CIO (“the Council”) and its affiliated local Unions signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organization whose names are subscribed hereto and who have through their officers executed this Agreement (“Signatory Unions”).

1.7 “Project Manager” means the person or business entity designated by the City to oversee all phases of construction on the Project.

1.8 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto, copies of which shall be on file with the City.

1.9 “Council” means the Contra Costa County Building & Construction Trades Council.

## ARTICLE II

### SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to the City and all Contractors/Employers performing construction contracts on the Project, the Council and its affiliated local Unions signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement (“Signatory Unions”).

2.2 Applicability: The Agreement shall govern City construction projects funded in whole or in part with City of Martinez funds and those Construction Contracts awarded on such Projects. For the purposes of this Agreement, the Project shall be considered completed upon filing of a Notice of Completion, or otherwise provided by applicable State law.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project, including geotechnical and exploratory drilling, and landscaping and temporary fencing that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation to be performed to complete the Project. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.1 This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion unless it is performed by City employees.

2.3.2 This Agreement covers all on-site fabrication work over which the City,

Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Contractor/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XII and XIII of this Agreement shall apply to such work.

## 2.6 Exclusions

- (1) The Agreement shall be limited to construction work on the Project.
- (2) The Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City which are not included in the Project.
- (3) The Agreement shall not apply to a Contractor/Employer's non-construction craft employees, including but not limited to executives, managerial

employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Collective Bargaining Agreements), staff engineers or other professional engineers, administrative, management, office and clerical employees.

(4) This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city or other governmental bodies or their contractors; or by public or private utilities or their contractors;

(5) The Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.7 Award of Contracts: It is understood and agreed that the City has the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Project Labor Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement. A copy of all invitations to bid shall be provided at time of issuance to the Contra Costa Building Trades Council.

### ARTICLE III

#### EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of a construction contract for the Project, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of a construction contract, the Contractor/Employer

shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a precondition of accepting an award of a construction subcontract to agree in writing, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a contractor may not be evaded by subcontracting.

3.4 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including Schedules A's, which are the local Master Agreements of the Signatory Unions having jurisdiction over the work on the Project, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

#### **ARTICLE IV**

#### **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1 The Unions, City and Contractor/Employers agree that for the duration of the Project:

(1) There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, handbilling, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor/Employer on any other project. It shall not be considered a violation of this article for a Union to withhold labor (but not picket) from any Contractor/Employer who fails to make its timely payment of Trust Fund contributions or fails to meet its weekly payroll. The affected Union shall give 72-hours written notice to the City and to the Contractor/Employer prior to withholding labor due to a Contractor's failure to make timely payment of Trust Fund contributions and 24- hours written notice to the City and to the Contractor/Employer when a Contractor/Employer fails to make weekly payroll or when paychecks are determined to be nonnegotiable by a financial institution normally recognized to honor such paychecks, during which time the Contractor/Employer shall have the opportunity to correct the default. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor/Employers on projects other than the Project.

(2) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

(3) If a Master Agreement between a Contractor/Employer and the Union expires before the Contractor/Employer completes the performance of a construction contract for work covered under this Agreement and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement shall continue in full force

and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union and Contractor/Employer. If the new or modified Master Agreement reached between the Union and Contractor/Employer provides that any terms of the Master Agreement shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on the project within seven (7) days after the effective date of the new or modified Master Agreement.

4.2 **Expedited Arbitration:** Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

(1) A party invoking this procedure shall notify Thomas Angelo, as the permanent arbitrator, or, Robert Hirsch, as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article 12.2. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the party alleged to be in violation and to the Council and involved local Union if a Union is alleged to be in violation.

(2) Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

(3) The arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(4) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider

any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

(5) Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2(4) of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

(6) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

(7) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

**ARTICLE V**

**PRECONSTRUCTION CONFERENCE**

5.1 A preconstruction conference shall be held at the Council's office prior to the commencement of each construction phase. Such conference shall be attended by a representative each from the participating Contractor/Employers and Union(s) and the Project Manager.

**ARTICLE VI**

**NO DISCRIMINATION**

6.1 The Contractor/Employers and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

**ARTICLE VII**

**UNION SECURITY**

7.1 The Contractor/Employers recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by Contractor/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before 8 days of consecutive or cumulative employment on the Project. Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by the law.

7.3 Authorized representatives of the Unions shall have access to the Projects whenever work covered by this Agreement is being, has been, or will be performed on the Project.

**ARTICLE VIII**

**REFERRAL**

8.1 Contractor/Employers performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration

facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of Federal law. The Contractor/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 **Local Hire:** It is in the interest of the parties to this Agreement to facilitate employment of City of Martinez and Local Area residents and to use resources in the Local Area in construction of the Project. The "Local Area" shall be defined as the communities of Martinez and Contra Costa County to be served by the Project. It is the objective of the parties that not less than twenty-five percent (25%) of all hours worked by journeymen on the Project, on a craft by craft basis, be worked by residents of the Local Area. The Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the contractor. The Parties to this Agreement support the development of increased numbers of skilled construction workers from the Local Area. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

**ARTICLE IX**

**WAGES AND BENEFITS**

9.1 All Contractor/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Schedule A of the Master Agreements of the appropriate local unions.

9.2 By signing this Agreement, the Contractor/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the City, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9. Holidays: Holidays shall be in compliance with the applicable Schedule A agreement.

**ARTICLE X**

**EMPLOYEE GRIEVANCE PROCEDURE**

10.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

**ARTICLE XI**

**COMPLIANCE**

11.1 It shall be the responsibility of the Contractor/Employers and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Employers on the Project. The City shall monitor and enforce compliance with the prevailing wage requirements of the state and Contractors/Employers' compliance with this Agreement.

**ARTICLE XII**

**GRIEVANCE ARBITRATION PROCEDURE**

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or City Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 12.1 may be extended by mutual written agreement of the parties.

12.2 Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, or the representative of the employee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable, to resolve the dispute within the five (5) business days after its referral to Step 1, within five (5) business days thereafter, the alleged grievance may be referred in writing by either involved party to the

Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance proceeding, prior to a Step 2 meeting, the Union(s) shall notify its International Union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting. The Project Manager and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not settled in Step 2 within five (5) business days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. The parties agree that if the permanent arbitrator or his alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. William Riker
2. Barry Winogard
3. Tom Angelo
4. Robert Hirsch
5. Jeri-Lou Cossack

The decision of the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

The time limits specified in any step of the Grievance Procedure set forth in

Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

12.3 Retention: At the time a grievance is submitted under this Agreement or any MLA, the Union(s) may request that the City withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail.

The amount shall be retained by the City until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

### **ARTICLE XIII**

#### **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES:**

13.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the

Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

13.3 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Contra Costa Building and Construction Council. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and City will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

#### **ARTICLE XIV**

#### **APPRENTICES**

14.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor/Employer(s) shall employ apprentices of a California State-approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

14.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

14.3 It is an objective of the parties to the Agreement that 25% of apprentices shall be Local Area residents. The Contractors shall reach this goal through utilization of the normal hiring hall procedures. The Unions are committed to working with the Contractors to achieve

these goals. All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprentices Programs.

14.4 There shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

**ARTICLE XV**

**MANAGEMENT RIGHTS**

15.1 The Contractor/Employer(s) shall retain full and, exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized.

**ARTICLE XVI**

**HELMETS TO HARDHATS**

16.1 The Contractor/Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center) and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

16.2 The Unions and Contractor/Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**ARTICLE XVII**

**DRUG & ALCOHOL TESTING**

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

17.2 The Parties agree to recognize and use the Substance Abuse Prevention Program contained in each applicable Union's Schedule A.

**ARTICLE XVIII**

**SAVINGS CLAUSE**

18.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or work in question.

18.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

18.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the unions will no longer be bound by the provisions of Article IV.

**ARTICLE XIX TERM**

19.1 The Agreement shall be included as a condition of the award of construction contracts for the Project.

19.2 This Agreement shall become effective on the day it is executed by the City and by

12.10.13

the Council. The City and the Council agree to meet and confer annually, subsequent to approval of this Project Labor Agreement by the City of Martinez, regarding the status of and experience with Projects covered by the Agreement and future projects to be covered by the Agreement.

CITY OF MARTINEZ

By \_\_\_\_\_ Date \_\_\_\_\_

CONTRA COSTA BUILDING AND  
CONSTRUCTION TRADES COUNCIL, AFL-CIO (COUNCIL)

By \_\_\_\_\_ Date \_\_\_\_\_

12.10.13

**SIGNATURE BLOCKS FOR UNIONS**

Asbestos Workers Local 16

Hod Carriers Local 166

Boilermakers Local 549

Roofers Local 81

Bricklayers Local 3

Iron Workers Local 378

Northern California Regional Council  
of Carpenters for and on Behalf of  
Their Affiliated Crafts

Laborers Local Union 324

Laborers Local Union 67

Sheet Metal Workers Local 104

Cement Masons Local 300

Operating Engineers Local 3

Electrical Workers Local 302

Painters District Council 16

Plasterers Local 66

Sprinkler Fitters Local 483

United Association Local 159

United Association Local 342

United Association Local 355

Teamsters Local 315

Elevator Constructors Local 8

12.10.13

**Addendum A**

**CITY OF MARTINEZ  
PROJECT LABOR AGREEMENT  
AGREEMENT TO BE BOUND**

[Addressee]  
[Address]  
[City and State]

Re: City of Martinez Project Labor Agreement.

Dear Mr. /Ms. \_\_\_\_\_ :

The undersigned party confirms that it agrees to be a party to and bound by the City of Martinez Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to Be Bound, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by the City of Martinez Project Labor Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to Be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Project Contract Number: \_\_\_\_\_

California State License Number:  
or Motor Carrier (CA) Permit Number \_\_\_\_\_

Name and Signature of Authorized Person: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)  
\_\_\_\_\_

**PROJECT LABOR AGREEMENT**  
**FOR THE**  
**PROJECT NAME**  
**PREAMBLE**

This Project Labor Agreement ("Agreement") is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_, together with other contractors and/or subcontractors who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Attachment A), (hereinafter referred to as "Contractor(s)"); the local unions signatory hereto and those affiliated with the Building & Construction Trades Department of the American Federation of Labor Congress of Industrial Organizations and the Contra Costa Building and Construction Trades Council, all on their behalf and on behalf of the various local unions involved, (hereinafter referred to as "Union(s)"); \_\_\_\_\_ (hereinafter referred to as "Project Manager"); and \_\_\_\_\_ (hereinafter referred to as "Coordinator"). The parties further agree that the provisions of this Agreement shall apply to the following construction project:

**PROJECT NAME** (hereinafter referred to as "Project").

WHEREAS, the successful completion of the Project is of the utmost importance to the City of Martinez (hereinafter referred to as "City" or "Owner"); and

WHEREAS, a skilled labor pool represented by the Unions will be required to complete the work involved; and

WHEREAS, the Unions agree to cooperate in every way possible with employees of the Contractors; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the parties recognize the need for safe, efficient and speedy construction in order to reduce unnecessary delays and result in timely completion of the Project; and

WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions, and the Contractors would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractors, and further, to encourage close cooperation among the Contractors and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the Agreement is not intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractors and the affected Unions except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract for the Project will be awarded in accordance with the applicable provisions of the California State Public Contract Code; and

WHEREAS, the City has the absolute right to select the lowest reliable and responsible bidder for the award of the construction contract on the Project; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Project;

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

## **PURPOSE**

The purposes of this Agreement are to promote efficient construction operations on the Project, to insure an adequate supply of skilled craftspeople and to provide for peaceful, efficient and binding procedure for settling labor disputes. In so doing, the parties to this Agreement establish the foundation to promote the public interest, to provide a safe work place, to assure high quality construction, to ensure an uninterrupted construction project, and to secure optimum productivity, on-schedule performance and the City's satisfaction.

It is the intent of the parties to set out uniform and fair working conditions for the efficient completion of the Project, maintain harmonious labor/management relations and eliminate strikes, lockouts and other delays.

It is in the interest of the parties to this Agreement to utilize all resources available in the local area, including those provided by minority-owned, women-owned, small, disadvantaged, and other businesses.

## **ARTICLE 1**

### **DEFINITIONS**

**"City"** or **"Owner"** means the City of Martinez;

**“Coordinator”** means the individual, company or entity responsible for the administration and application of this Agreement. The Coordinator for this Agreement shall be: \_\_\_\_\_.

**“Contractor”** means a general contractor and/or subcontractor, at any tier, performing covered construction work on the Project;

**“Project”** means [Describe the Project];

**“Building Trades Council” or “Council”** means the Contra Costa County Building and Construction Trades Council;

**“Union”** means the Unions that are signatory to this Agreement;

**“Master Collective Bargaining Agreement” or “Local Collective Bargaining Agreement”** means the local collective bargaining agreements for the affected crafts negotiated by the historically recognized collective bargaining parties in the area. Copies of all such collective bargaining agreements shall be on file with the Building Trades Council and are incorporated herein by reference.

## **ARTICLE 2**

### **SCOPE OF AGREEMENT**

- 2.1 This Agreement shall apply to all construction work including demolition, site preparation, alteration and repair on the above-described Project awarded by the Owner and/or Construction Manager, and any related change order(s).
- 2.2 This Agreement shall apply only to construction/craft employees working on this Project represented by the Unions signatory hereto, and shall not apply to Contractors' technical or non-manual employees including, but not limited to, executives, engineers, office and clerical employees, drafters, supervisors above the classification of general foreman, timekeepers, messengers, or inspectors, material testers, and/or x-ray technicians, except to the extent that such inspectors, material testers, and/or x-ray technicians are customarily covered by the Local Collective Bargaining Agreement and as to which classification a prevailing wage determination has been published.
- 2.3 Except as required otherwise by the Project documents or accepted construction practices, there shall be no limitation or restriction upon the choice of materials or upon the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. Lawful fabrication provisions of the appropriate national or Local Collective Bargaining Agreements shall be applicable.
- 2.4 It is recognized by the parties to this Agreement that the signatory Coordinator and Contractor(s) are acting only on behalf of said Coordinator and Contractor(s), and said Coordinator and Contractor(s) have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind the Owner.

- 2.5 It is expressly agreed and understood by the parties hereto that the Owner shall retain the right at all times to perform and/or subcontract all portions of the construction and related work on the Project site not covered by this Agreement.
- 2.6 The working conditions and hours of employment herein provided have been negotiated between the parties signatory to this agreement.
- 2.7 Without limiting the foregoing, items specifically excluded from the scope of this Agreement include the following:
- (a) Equipment and machinery owned or controlled and operated by the Owner;
  - (b) All employees of any Contractor, design team or any other consultant of the City not performing manual labor within the scope of this Agreement;
  - (c) Any work performed on or near or leading to the site of work covered by this Agreement and undertaken by state, county, city or other governmental bodies, or their contractors, or by public utilities or their contractors, and/or by the Owner or its contractors (for work which is not part of the scope of this Agreement);
  - (d) Off-site maintenance of leased equipment and on-site supervision of such work;
  - (e) Laboratory or specialty testing or inspection not ordinarily done by the signatory local unions;
  - (f) Non-construction support services contracted by the Owner or any Contractor in connection with this Project; and
  - (g) All work by employees of the Owner.
- 2.8 Work covered by the Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors, except that Articles 5, 6, and 11 of the Agreement will apply to such work.

### **ARTICLE 3**

#### **SUBCONTRACTS**

- 3.1 Each Contractor(s) agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm, or corporation who is or becomes party to this Agreement. Any Contractor(s) or subcontractor working on the Project shall, as a condition working on the Project, become signatory to and perform all work under the terms of this Agreement.
- 3.2 A subcontractor is defined as any person, firm or corporation who agrees under contract with the Contractor(s), or a subcontractor of the Contractor, at any tier, to perform on the Project, any part or portion of the construction work covered by the prime contract, including the operating of construction equipment, performance of labor and/or installation of materials.

- 3.3 The Contractor(s) has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor(s) elect to subcontract, the Contractor(s) shall continue to have such primary obligation.
- 3.4 The Contractor shall provide in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this Agreement. The Contractor shall remain liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, including payments to Health & Welfare, Pension, Vacation/Holiday, Dues and Training & Retraining Funds to the extent provided by law.
- 3.4.1 The contractor(s) will give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the subcontractor. Written notice at a Pre-Job Conference shall be deemed written notice under this provision for those subcontractors listed at the Pre-Job only.
- 3.4.2 The provisions of this Section 3.4 shall be applied only to the extent permitted by law and, notwithstanding any other provision of this Agreement, no aspect of the subcontractors' clause, including its enforcement, may be enforced by or subject to strike action or any other labor disruption.

#### **ARTICLE 4**

##### **RELATIONSHIP BETWEEN PARTIES**

- 4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of the Coordinator and signatory Contractor(s) unless signed by such parent, affiliate, subsidiary, or other division of such company.
- 4.2 Each Contractor(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement except as modified by Article 3. Any alleged breach of this Agreement by a Contractor(s) or any dispute between the signatory Union(s) and the Contractor(s) respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor(s) party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability by a signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the signatory Contractors and the other Unions party to this Agreement.

## **ARTICLE 5**

### **NO STRIKES - NO LOCKOUTS**

- 5.1 During the life of this Agreement, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, boycott, sympathy strike, picketing or other work stoppage of any nature whatsoever, for any cause whatsoever, or any other type of interference of any kind, coercive or otherwise, and it is expressly agreed that any such action is a violation of this Agreement.
- 5.1.1 Should a Contractor performing work on this Project be delinquent in the payment of Trust Fund contributions required under this Agreement with respect to employees represented by the Union, the Union may request that the General Contractor issue joint checks payable to the Contractor and the appropriate employee benefit Trust Fund(s) until such delinquencies are satisfied. Any Trust Fund claiming that a Contractor is delinquent in its fringe benefit contributions to the funds, will provide written notice of the alleged delinquency to the affected Contractor, with copies to the General Contractor and the Owner. The notice will indicate the amount of delinquency asserted and the period that the delinquency covers. It is agreed, however, with respect to contractors delinquent in trust or benefit contribution payments, that nothing in this Agreement shall affect normal contract remedies available under the local collective bargaining agreements. If the General Contractor is delinquent in the payment of Trust Fund(s) contributions for covered work performed on this Project, the General Contractor agrees that the affected Trust Fund(s) may place the Owner on notice of such delinquencies and the General Contractor further agrees that the Owner may issue joint checks to the General Contractor and the Trust Fund(s) until the delinquency is satisfied.
- 5.1.2 Expiration of Local and Other Applicable Agreements. It is specifically agreed that there shall be no strike, sympathy strike, picketing, lockout, slowdown, withholding of work, refusal to work, walk-off, boycott or other work stoppage of any kind as a result of the expiration of any local, regional or other applicable labor agreement having application at the Project and/or failure of the parties to that agreement to reach a new contract. In the event that such a local, regional, or other applicable labor agreement does expire and the parties to that agreement have failed to reach agreement on a new contract, work will continue to the Project on one of the following two bases, both of which will be offered by the Union(s) involved to the General Contractor and the Contractors affected:
- (a) Each of the Union(s) working with a contract expiring must offer to continue working on the Project under interim agreements that retain all the terms of the expiring contract, except that the Union(s) involved in such expiring contract(s) may each propose wage rates and Contractor contribution rates to employee benefits funds different from what those rates were under the expiring contract(s). Said interim agreement(s) would be superseded by any subsequently reached industry agreement(s)

as of the date the industry agreement is reached. The terms of the Union's interim agreement offered to the Contractor will be no less favorable than the terms offered by the Union to any other Contractor or group of Contractors covering commercial construction work in Contra Costa County; or

- (b) Each of the Union(s) with a contract expiring must offer to continue working on the Project under all the terms of the expiring contract, including the wage rates and Contractor contribution rates to the employee benefit funds, if the Contractor(s) affected by that contract agree to the following retroactivity provisions; if a new local, regional or other applicable labor agreement for the industry having application at the Project is ratified and signed during the term of this Agreement and if such new labor agreement provides for retroactive wage increases, then each affected Contractor shall pay to its employees who performed work covered by this Agreement at the Project during the period between the effective dates of such labor agreements, an amount equal to any such retroactive wage and benefit increases established by such new labor agreement, retroactive to whatever dates are provided by the new local, regional or other applicable agreement for such increase to go into effect, for each employee's hours of work on the Project during the retroactivity period. All parties agree that such affected Contractor shall be solely responsible for any retroactive payments to its employees and trust funds and that neither the General Contractor nor the Owner has any obligations, responsibility or liability whatsoever for any such retroactive payments or collection of any such retroactive payments from any other Contractor.

The General Contractor and the affected Union will mutually decide for each affected subcontractor (after consultation with each such subcontractor) between the above two options of having its subcontractor continue to work on the Project under the terms of the interim agreement offered under paragraph (a) above by the Union, or having its subcontractor continue to work on the Project on the retroactivity basis established under paragraph (b) above. The General Contractor and the affected Union may mutually decide upon the interim agreement option for some subcontractors and the retroactivity option for other subcontractor(s). To decide between the two options, the General Contractor will be given one week after the particular labor agreement has expired or one week after the Union has personally delivered to the General Contractor in writing its specific offer of terms of the interim agreement pursuant to paragraph (a) above, whichever is the later date.

- 5.3 If a violation of this Article by the Unions and/or its officers, agents, members and/or employees occurs, upon written facsimile, email or telegraphic notice of such violation to the Local and International Union(s) offices, the Union(s) and its officers shall take immediate action and will prevent, end or avert any such aforementioned activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not

limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. The Contractor(s) shall have the right, in the event of a work stoppage by the Union(s) to replace the employees represented by the Union(s) in violation of this Agreement in any way the Contractor(s) chooses, until the Union(s) effects the return to work of such employees. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 5.

- 5.4 In consideration of the foregoing, the Contractor(s) shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by the Contractor(s) for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include the Owner's or Contractors' decision to terminate or suspend work on the site or any portion thereof for any reason.
- 5.5 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and the procedure of Article 11, if invoked.
- 5.6 Any party to this Agreement may institute the following binding arbitration procedure when a breach of this Article is alleged, except as provided in Section 5.6.8, below. In the event a party institutes this procedure, arbitration shall be mandatory.
  - 5.6.1 The party invoking this procedure shall immediately notify Thomas Angelo, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, Robert Hirsch is appointed as the back-up Arbitrator. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegraph or similar means to the party alleged to be in violation and the involved Union General President.

The contact information for the permanent Arbitrator and the back-up Arbitrator is:

Thomas Angelo  
Arbitrator  
P.O. Box 1937  
Mill Valley, CA 94942  
Phone: (415) 381-1701  
Mobile: (415) 699-6527  
Fax: (415) 380-9792  
Email: [tangelomv@gmail.com](mailto:tangelomv@gmail.com)

Robert Hirsch  
Back-Up Arbitrator  
P.O. Box 170428  
San Francisco, CA 94117  
Phone: (415) 362-9999  
Mobile: (415) 676-9619  
Fax: (415) 752-7678  
Email: [rmhirsch@gmail.com](mailto:rmhirsch@gmail.com)

- 5.6.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.

- 5.6.3 The Arbitrator shall notify the parties by facsimile, email, telegram or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.
- 5.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court or other arbitration proceedings, if any. The Arbitrator shall order cessation of the violation of this Article and other appropriate relief. Such award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator's award shall be served on all parties by hand or registered mail upon issuance.
- 5.6.5 The award shall be final, binding and non-reviewable as to the merits, and may be enforced by any court of competent jurisdiction, upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Facsimile, telegraphic or similar notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 5.6.4 of the Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
- 5.6.6 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued.
- 5.6.7 The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be divided equally between the parties to the arbitration.
- 5.6.8 The procedures contained in Section 5.6 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article shall be subject to the grievance and arbitration procedures of Article 11.

## **ARTICLE 6**

### **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

- 6.1 All Contractors and subcontractors shall stipulate to and have the responsibility for making work assignments in accordance with the rules, regulations and procedures of the Plan for Settlement of Jurisdictional Dispute in the Construction Industry approved by the Building & Construction Trades Council AFL-CIO, June 14, 1984, or any successor plan.

- 6.2 There will be no strikes, no work stoppages or slowdowns or other interferences with the work because of jurisdictional disputes.
- 6.3 Where a jurisdictional dispute exists and cannot be resolved by the Local Unions involved, it shall be referred for resolution to the International Unions. The resolution of the dispute shall be reduced to writing and signed by the authorized representative of the International Unions and the Contractor(s). The original assignments made by the Contractor(s) shall be followed until such time as the dispute is resolved in accordance with this Article.
- 6.3.1 In the event that the respective International Unions of the disputing Locals and the Contractor(s) are unable to resolve the dispute within five (5) days from the date of referral, the dispute may be referred by any of the Interested Parties to the arbitration system of the Plan for the Settlement of Jurisdictional Disputes referred to in Section 6.1 of this Article.
- 6.4 There shall be no work stoppage, work interruption, strike, sympathy strikes, picketing, hand-billing or public notices of any kind while any jurisdictional dispute is being resolved. Pending resolution of the dispute, the work shall continue uninterrupted as originally assigned by the Contractor(s). The Contractor(s) shall have the right, in the event of a work stoppage by the Union(s), to replace the employees represented by the Union(s) in violation of this Agreement in any way the Contractor(s) choose, until the Union(s) effects the return to work of such employees.

## **ARTICLE 7**

### **COORDINATOR**

- 7.1 The above-named Coordinator is responsible for the administration and application of this Agreement, but neither the Coordinator nor the City shall incur any liability as a consequence of such administration or application.
- 7.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions signatory hereto and will conduct the monthly joint Labor/Management meeting referred to in Article 8 below. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, and will not be a party to any arbitration or litigation arising out of this Agreement.

## **ARTICLE 8**

### **JOINT LABOR/MANAGEMENT MEETINGS**

- 8.1 A joint Labor/Management meeting will be held on a monthly basis between the Coordinator, the Contractors and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the Craftsperson and the Contractors on the Project. These monthly meetings will also include discussion of the scheduling and productivity on work performed on the Project.

- 8.2 A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Contractor's contract. When a contract has been let to a Contractor(s) covered hereby, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union(s), Contractor(s) or the Coordinator.
- 8.3 The Contractor performing the work shall have the responsibility for making work assignments in accordance with Section 6.1 of this Agreement. The work assignments shall be made in writing. Any craft objecting to the Contractor's proposed assignment of work shall have ten (10) working days from the date of the Mark-Up Meeting to submit written objections to the Contractor before the Contractor makes the work assignments final.
- 8.4 The Coordinator will schedule and attend all Pre-Job and Mark-Up Meetings and participate in discussions as they pertain to the terms and conditions of this Agreement.

## **ARTICLE 9**

### **MANAGEMENT RIGHTS**

- 9.1 The Contractor(s) retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:
  - (a). Plan, direct and control the operation of all the work.
  - (b). Decide the number and types of employees required to perform the work safely and efficiently.
  - (c). Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.
  - (d). Require all employees to observe the Contractors' Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job Conference and supplied to all employees and/or posted on the jobsite. The Contractor may implement drug testing on the job consistent with the drug testing procedures contained in the applicable craft agreement.
  - (e). Discharge, suspension or discipline will be handled under the applicable craft agreement.
  - (f). Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work, however, individual craftspeople shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft's refusal to work overtime shall be subject to the grievance procedure.

- (g). Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designator (in accordance with Article 21), except as required otherwise by the Project documents or accepted construction practices.
- (h). The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein.

**ARTICLE 10**  
**WORK RULES**

- 10.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s), it being understood that in the selection of such foremen, the Contractor(s) will give first consideration to the qualified individuals available in the local area and in accordance with the Craft's local Collective Bargaining Agreement. Foremen and general foremen shall take orders from the designated Contractor(s) representatives.
- 10.2 There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. Craftpersons using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen.
- 10.3 Security procedures for control of tools, equipment and materials are solely the responsibility of Contractor(s).
- 10.4 A badge system may be used to check in and out. Each employee must personally check in and out. The Contractor(s) will provide adequate facilities for check in and out in an expeditious manner.
- 10.5 Employees shall be at their place of work (as designated by the Contractor at the Pre-Job Conference) and ready to work at the starting time and shall remain at their place of work performing their assigned functions until quitting time. A reasonable time will be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.
- 10.6 Slowdowns, standby crews and featherbedding practices will not be tolerated.
- 10.7 It is understood by the Contractor(s) and agreed to by the Union(s), that the employees of the Contractor(s) will perform the work requested by the Contractor(s) without having any concern or interference with any other work performed by any employees of the Owner or others who are not covered by this Agreement including, but not limited to, maintenance and operations.
- 10.8 Rest periods shall be provided in accordance with Industrial Welfare Commission Wage Order 16. Employees will be permitted to have personal thermos bottles, the contents of which may be consumed during working hours at their assigned work locations.

- 10.9 All foremen will remain with their crews and supervise such crews in the performance of their duties.
- 10.10 There shall be no interference with vendor or supplier deliveries of equipment, apparatus, machinery and construction materials to the jobsite since such deliveries shall not fall under this Agreement. Unloading of the above will be performed by signatory Contractors' employees.
- 10.11 The Contractor(s) will furnish facilities for storage of tools, adequate sanitary facilities and clean, heated, dry change rooms. However, Contractor(s) will incur no liability for loss, theft, or damage to personal tools left in tool storage not provided by the Contractor(s). The Contractor(s) has the right to take any reasonable action deemed necessary to control tool losses. Personal tools when brought onto the jobsite at time of employment may be inventoried as to type and number of tools and condition. Tool provision and losses will be handled according to the individual craft local agreements.
- 10.12 The Contractor(s) and the Unions recognize the necessity for promoting efficiency and agree that no rules, customs or practices shall be permitted that cause overmanning, limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kind of machinery, tools or labor-saving devices, except as required by the Project documents or accepted construction practices. However, the lawful manning provisions of the Craft local agreements shall be recognized.
- 10.13 Employees shall receive a one-half hour lunch period with pay and meals at the expense of the Contractor(s) if the employee is required to work beyond ten (10) consecutive hours (not including the regular one-half hour lunch period), and after working each additional four (4) hours. If meals are not provided, a meal allowance of \$10.00 will be paid in lieu thereof.

## **ARTICLE 11**

### **GRIEVANCE PROCEDURE**

- 11.1 All disputes concerning the interpretation and/or application of this Agreement which do not fall within the Article 5 No-Strike No-Lockout procedure shall be governed by the following grievance and arbitration procedures. All other disputes shall be governed by the grievance and arbitration procedures contained in the applicable local collective bargaining agreement.
- 11.2 A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within five (5) working days after the grievance is alleged to have occurred or within five (5) working days after the Union's first knowledge of the grievance, whichever comes first. Similarly, a grievance shall be considered null and void if not brought to the attention of the Union(s) within five (5) working days after the grievance is alleged to have occurred or within five (5) working days after the Contractors(s)' first knowledge of the grievance, whichever comes first.

- 11.3 Grievances shall be settled according to the following Steps:
- Step 1: The steward or business representative and the grievant shall attempt to resolve the grievance with the craft supervisor.
  - Step 2: In the event the matter remains unresolved for five (5) working days in Step 1 above, within five (5) working days thereafter, the grievance shall be reduced to writing and may then be referred by the Union to the Contractor(s) for discussion and resolution.
  - Step 3: In the event the matter remains unresolved for five (5) working days in Step 2, either Party may request, within five (5) working days thereafter that the dispute be submitted to arbitration.
  - Step 4. The Parties agree that the Arbitrator who will hear the grievance shall be selected from among the following: William Riker, Barry Winograd, Thomas Angelo, Robert Hirsch, and Jeri-Lou Cossack. The Arbitrator shall be selected on a rotating basis and the Coordinator shall be responsible for advising the parties as to which Arbitrator is next in line to resolve the dispute. If the Arbitrator next in line is unavailable to hear the dispute within a reasonable time period in the opinion of the parties, the next Arbitrator in line shall serve as the Arbitrator of the dispute.
- The addresses, telephone numbers, and fax numbers for the above-named Arbitrators are listed in Attachment B.
- 11.4 The arbitration procedure contained herein, once invoked, shall be mandatory. Should a Party to the procedure fail or refuse to participate in the hearing, if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award. The Arbitrator's award shall be final and binding on all Parties to the arbitration. The costs of the arbitration, including the arbitrator's fee and expenses, shall be borne equally by the Parties. The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify amend, alter, add to, or subtract from, any provisions of this Agreement.
- 11.5 The time limits set out in this procedure may, upon mutual agreement, be extended. Any request for arbitration, request for extension of time limits, and agreement to extend such time limits shall be in writing.
- 11.6 The Contractor(s), as well as the Union, may bring forth grievances under this Article.

## **ARTICLE 12**

### **UNION RECOGNITION AND REPRESENTATION**

- 12.1 All employees working on the project shall be governed by the applicable union security clause of the applicable craft's Schedule A Agreement.

Employees hired by the Contractor(s) shall, as a condition of employment, be responsible for the payment of the applicable monthly dues, working dues and any associated fees uniformly required for union membership in the local union which is signatory to this agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.

- 12.2 The Contractor(s) recognizes the Unions signatory hereto as the sole and exclusive collective bargaining representatives for its craft employees on the Project.
- 12.3 Authorized representatives of the Unions shall have access to the site during established working hours, provided they do not unduly interfere with the work of the employees.
- 12.4 A Steward shall be a working journeyman appointed by the authorized union representative of the Local Union(s) who shall, in addition to work as a journeyman, be permitted to perform during working hours such Union(s) duties as cannot be performed at other times which consists of those duties assigned by the Business Manager or Business Agent. The Union(s) agrees that such duties shall be performed as expeditiously as possible and the Contractor(s) agrees to allow the Steward a reasonable amount of time for the performance of such duties. It is understood and agreed that the Steward's duties do not include any matters relating to referral or hiring. The Steward shall not leave the work area without notifying the appropriate supervisor.
- 12.5 The Steward will be paid at the journeyman wage for the job classification in which the Steward is employed.
- 12.6 The treatment of stewards shall be in accordance with the applicable craft agreement.

## **ARTICLE 13**

### **REFERRAL**

- 13.1 Contractors performing construction work on the Project described in the Agreement shall, in filling craft job vacancies, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of Federal law. The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with Article 19.
- 13.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).
- 13.3 In the event referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period after such requisition is made by the Contractor(s) (Saturday, Sunday and holidays excluded), the Contractor(s) shall be free to obtain employees from any source.

- 13.4 The Unions shall exert their utmost efforts, including requesting assistance from other Local Unions, to recruit sufficient number of skilled Craftpersons to fulfill the labor requirements of the Contractors.
- 13.5 Recognizing the special needs of this Project and the acute shortage of skilled craftspeople, the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

## **ARTICLE 14**

### **NON-DISCRIMINATION**

- 14.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, religion, Vietnam veteran or Vietnam Era status, disability as identified in the Americans with Disabilities Act or any other basis recognized by law.

## **ARTICLE 15**

### **APPRENTICES**

- 15.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor(s) will employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
- 15.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.
- 15.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

## **ARTICLE 16**

### **WAGE SCALES and FRINGE BENEFITS**

- 16.1 All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining parties and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to California Labor Code.
- 16.2 During the period of construction on this Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining parties on the effective date as set forth in the

applicable collective bargaining agreement. The Unions shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

- 16.3 The Contractors hereby adopt and agree to be bound by the written terms of the legally established local trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate local agreements. The Contractors authorize the parties to such local trust agreements to appoint Trustees and successor Trustees to administer the trust funds, and hereby ratify and accept the Trustees so appointed as if made by the Contractors.
- 16.4 Wages due shall be paid to all employees weekly, not later than on Friday, and not more than three (3) days' wages may be withheld and shall be paid before the end of the work shift. Payment shall be made by check with detachable stub.
- 16.5 When an employee is discharged, the employee shall be paid wages due immediately. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

## **ARTICLE 17**

### **HOURS OF WORK, OVERTIME and SHIFTS**

- 17.1 **Hours or Work:** The work week will start on Monday and conclude on Sunday. Eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the shift. Forty (40) hours per week, Monday through Friday, shall constitute a regular week's work. The foregoing provisions of this Article are applicable unless otherwise provided in the General Prevailing Wage Determinations made by the Director of Industrial Relations pursuant to California Labor Code. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.
- 17.2 **Overtime:** Overtime will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code.
- 17.3 **Shifts:** The Contractor(s) shall have the right to establish shifts for any portion of the work in accordance with this Section.
- 17.3.1 If two (2) or three (3) shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period, the second shift shall consist of seven and one-half (7 1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the third shift shall consist of seven (7) hours of continuous work exclusive of a one-half (1/2) non-paid lunch period for eight (8) hours pay.

- 17.3.2 Shift work may be performed at the option of the Contractor(s) but, when performed, it must continue for a period of not less than five (5) consecutive working days. The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth consecutive day.

## **ARTICLE 18**

### **HOLIDAYS**

- 18.1 Holidays will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code.

## **ARTICLE 19**

### **REPORTING PAY**

- 19.1 Any employee reporting for work and for whom no work is provided, except when given prior notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts work shall receive at least four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.
- 19.1.1 Whenever minimum reporting pay is provided for employees, they will be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the principal supervisor of the Contractor(s) or its designated representative.
- 19.1.2 The provisions of this Section are not applicable where the employee voluntarily quits, in which case the employee shall be paid for the actual time worked.
- 19.2 It will not be a violation of this Agreement when the Owner or Contractor(s) consider it necessary to shut down because of an emergency situation that could endanger life or property. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Owner or Contractor(s) request employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

## **ARTICLE 20**

### **TRAVEL, SUBSISTENCE and ZONE PAY**

- 20.1 Travel, subsistence and zone pay will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code.

## **ARTICLE 21**

### **HEALTH AND SAFETY**

- 21.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor(s), be bound by the safety rules and regulations as established by the Owner and Contractor(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.
- 21.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor(s) on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the contractor(s). Nothing in this Agreement will make the Union(s) or owner liable to any employee or to other persons in the event that injury or accident occurs.
- 21.3 A convenient supply of cold and potable drinking water shall be provided by the Contractor(s).
- 21.4 The Contractor(s) and Union(s) agree to abide by the substance abuse policy contained in the respective Master Collective Bargaining Agreements for the affected crafts.

## **ARTICLE 22**

### **SECURITY OF MATERIAL, EQUIPMENT and TOOLS**

- 22.1 Security procedures for the control of tools, equipment and materials shall be solely the responsibility of the Contractor(s).
- 22.2 All employees will comply with the security procedures established by the Contractor(s) and the Owner.
- 22.3 Theft and/or loss of the Owner's tools and equipment is a major concern on the Project. The Owner's Security Regulations will be strictly enforced.
- 22.4 Violations or failure to comply with the Owner's Security Regulations while on the Project jobsite may result in termination and/or exclusion from the Project jobsite.

## **ARTICLE 23**

### **CALL-INS**

- 23.1 Call-ins will be governed by the applicable craft collective bargaining agreement.

## **ARTICLE 24**

### **ENTIRE AGREEMENT**

- 24.1 This Agreement represents the complete understanding of the parties but shall not affect the validity of the City's Project documents. In the event of conflict between this Agreement and the Project documents, the Project documents shall take precedence.
- 24.2 The Unions agree that this Agreement covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of this Agreement, neither the Contractor(s), nor the Union(s) will be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the Unions involved and the Coordinator.
- 24.3 Any other agreement or modification of this Agreement must be reduced to writing and signed by the Coordinator and the Unions involved.

## **ARTICLE 25**

### **GENERAL SAVINGS CLAUSE**

- 25.1 It is not the intention of either the Contractor(s) or the Union(s) parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, the Contractor(s) and Union(s) agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.
- 25.2 In the event that a decision of a Court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

## **ARTICLE 26**

### **DURATION OF AGREEMENT**

- 26.1 This Agreement shall become effective on the day the Owner awards the first contract covered by the scope of this Agreement and shall continue in full force and effect until completion of the scope of the Project. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

DATE: \_\_\_\_\_

**CONTRACTOR**

**CONTRA COSTA BUILDING &  
CONSTRUCTION TRADES COUNCIL**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Greg Feere, Chief Executive Officer

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

**PROJECT MANAGER  
CITY OF MARTINEZ**

**COORDINATOR  
CITY OF MARTINEZ**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Capacity: \_\_\_\_\_

PROJECT LABOR AGREEMENT

SIGNATURES

**Signatory Unions:**

\_\_\_\_\_  
Asbestos Workers Local #16

\_\_\_\_\_  
Bricklayers & Allied Craft Workers  
Local #3

\_\_\_\_\_  
Northern California Carpenters  
Regional Council

\_\_\_\_\_  
Millwrights Local #102

\_\_\_\_\_  
District Council of Plasterers &  
Cement Masons

\_\_\_\_\_  
Electricians Local #301

\_\_\_\_\_  
Plasterers Local #66

\_\_\_\_\_  
Plumbers Local #159

\_\_\_\_\_  
Roofers Local #81

\_\_\_\_\_  
Teamsters Local #315

\_\_\_\_\_  
Boilermakers Local #549

\_\_\_\_\_  
Hod Carriers Local #166

\_\_\_\_\_  
Iron Workers Local #378

\_\_\_\_\_  
Northern California District Council of  
Laborers

\_\_\_\_\_  
Operating Engineers Local #3

\_\_\_\_\_  
Painters & Allied Trades District  
Council #6

\_\_\_\_\_  
Pile Drivers Local #34

\_\_\_\_\_  
Sheet Metal Workers Local #104

\_\_\_\_\_  
Sprinkler Fitters Local #483

\_\_\_\_\_  
Steamfitters Local #342

\_\_\_\_\_  
Underground Utility/Landscape #355

\_\_\_\_\_  
Elevator Construction Local #8

**PROJECT LABOR AGREEMENT**  
SIGNATURES (Continued)

\_\_\_\_\_  
Laborers Local #324

\_\_\_\_\_  
Lathers Local #68L

**ATTACHMENT "A"**  
**PROJECT LABOR AGREEMENT**  
**FOR**  
**PROJECT NAME**  
**BETWEEN**  
**<<Contractor>>**  
**AND**  
**SIGNATORY CONTRA COSTA COUNTY BUILDING CONSTRUCTION**  
**TRADES UNIONS**  
**AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor (CONTRACTOR) on **PROJECT NAME**, (hereafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the "Project Labor Agreement" (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

Accepts and agrees to be bound by the terms and conditions of the AGREEMENT, together with any and all amendments and supplements now existing or which are later made thereto:

The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 16 of this AGREEMENT.

The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;

Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.

Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: \_\_\_\_\_  
\_\_\_\_\_ (Name of Contractor)

\_\_\_\_\_  
\_\_\_\_\_  
(Name of Prime Contractor or Higher Level Subcontractor) (Authorized Officer & Title)

\_\_\_\_\_  
\_\_\_\_\_ (Address)

\_\_\_\_\_  
\_\_\_\_\_ (Phone) \_\_\_\_\_ (Fax)

**MEMORANDUM OF UNDERSTANDING**

**PROJECT LABOR AGREEMENT**

Notwithstanding any provision to the contrary in the Project Labor Agreement , this memorandum will confirm that work covered by the Project Labor Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors, except that Articles 5, 6 and 11 of the Project Labor Agreement will apply to such work.

INTERNATIONAL UNION OF  
ELEVATOR CONSTRUCTORS  
LOCAL UNION NO. 8

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT 'B'**

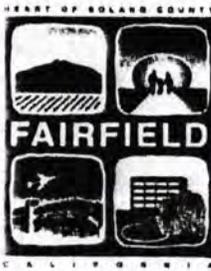
Mr. Thomas Angelo  
Arbitrator  
P.O. Box 1937  
Mill Valley, CA 94942  
(415) 381-1701 General  
(415) 699-6527 Mobile  
(415) 380-9792 Fax  
[tangelomv@gmail.com](mailto:tangelomv@gmail.com)

Ms. Jerilou Cossack  
Arbitrator  
3231 Quandt Road  
Lafayette, CA 94549  
(925) 939-1904 General  
(925) 360-1524 Mobile  
(925) 939-1904 Fax  
[jhc@jerilou-cossack.com](mailto:jhc@jerilou-cossack.com)

Mr. Robert M. Hirsch  
Attorney at Law/ Arbitrator/ Mediator  
P.O. Box 170428  
San Francisco, CA 94117  
(415) 362-9999 General  
(415) 676-9619 Mobile  
(415) 752-7678 Fax  
[rmhirsch@gmail.com](mailto:rmhirsch@gmail.com)

Mr. William Riker  
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15 Santa Paula Avenue  
San Francisco, CA 94127-1541  
(415) 664-1538 General  
(415) 664-1538 Fax  
[werarb@earthlink.net](mailto:werarb@earthlink.net)

Mr. Barry Winograd  
Arbitrator  
Lake Merritt Plaza  
1999 Harrison Street, Suite 1400  
Oakland, CA 94612-3517  
(510) 273-8755 General  
(510) 393-7283 Mobile  
(510) 273-8746 Fax  
[winmedarb@aol.com](mailto:winmedarb@aol.com)



## Agenda Report

**DATE:** July 15, 2014

**TO:** The Mayor and City Council

**FROM:** David A. White, City Manager DW  
George R. Hicks, Director of Public Works GRH

**SUBJECT:** Resolution of the City Council Approving the Project Labor Agreement (PLA) for the Construction of the City of Fairfield Intermodal Station Project and Directing Staff to Incorporate the PLA into the Plans and Specifications for the Fairfield Intermodal Station Project

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### RECOMMENDED ACTION

Adopt resolution.

### STATEMENT OF ISSUE

At the April 15, 2014, meeting, the City Council directed staff to enter into negotiations with the Napa-Solano Building Trades Council on a Project Labor Agreement (PLA) for the upcoming Fairfield Intermodal Station Project (Project). These negotiations are complete and the PLA attached for City Council adoption. If the PLA is approved, it must be incorporated into the contract documents for the Project.

### DISCUSSION

At the City Council workshop that was held on February 1, 2014, the City Council expressed an interest in having staff negotiate a PLA for the Fairfield Intermodal Station Project (Project). The Project includes an overpass of the UPRR tracks, widening of Peabody Road to 6 lanes from Huntington to Vanden, installation of 6,650 feet of new track, and construction of the platform, passenger amenities and site improvements for the Train Station. The City Council formally considered this issue at their meeting on April 15, 2014, and directed staff to enter into negotiations with the Napa-Solano Building Trades Council. In addition to approving a set of principles to guide negotiations, City Council asked that staff incorporate local-hire provisions and a helmets-to-hardhats program to put veterans back to work.

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DATE: July 15, 2014  
SUBJECT: Resolution of the City Council Approving the Project Labor Agreement (PLA) for the Construction of the City of Fairfield Intermodal Station Project and Directing Staff to Incorporate the PLA into the Plans and Specifications for the Fairfield Intermodal Station Project

City staff has completed negotiations with the Napa-Solano Building Trades Council and has attached the PLA for the Project for City Council consideration. The following outlines some of the key elements of the PLA:

- As required by the Public Contract Code, the PLA contains prohibitions against strikes, work stoppages, and lockouts. One exception to this is the situation where a contractor or subcontractor fails to meet its weekly payroll, or make the required contributions to the union controlled benefit funds. In this situation, the affected union can withhold labor from the particular contractor or subcontractor until payment has been made.
- The scope of the work covered by the PLA is broad and includes all construction and testing work performed on site, any off-site work that is necessary for the Project, and the delivery of supplies and/or materials for the Project and off-hauling. Should City Council approve the PLA, the City will enter into a Side Letter with Operating Engineers to ensure that the City can perform soils and materials testing for quality control purposes. This work may be done by City employees or by consultants under consultant services agreements and not subject to the terms of the PLA.
- The PLA establishes an objective that not less than 25% of all hours worked on the Project be worked by residents of Napa and Solano Counties. The unions have agreed to exert their utmost efforts to achieve this objective.
- The PLA requires the unions and the contractor to coordinate with the Center for Military Recruitment, Assessment and Veterans Employment to identify veterans that are qualified to work on the Project.
- The unions are the sole source of craft labor on the Project. However, the contractor for the Project may employ up to a maximum of five employees from its own workforce if the employee demonstrates the following qualifications: possesses required licenses and certifications; has worked a total of at least 2,000 hours in the construction craft in the past two years; was on the contractor's payroll for forty-five (45) consecutive business days (a minimum of 360 hours worked in the nine consecutive weeks); and lives in Napa, Solano, Contra Costa or Yolo Counties.
- While the City is already required to pay prevailing wages, the PLA also requires that the contractor make contributions to the vacation, pension, and deferred compensation plan, apprenticeship, and health benefit funds of the union.

DATE: July 15, 2014  
SUBJECT: Resolution Approving the Project Labor Agreement (PLA) for the Construction of the City of Fairfield Intermodal Station Project and Directing Staff to Incorporate the PLA into the Plans and Specifications for the Fairfield/Vacaville Train Station Project

- No employee working under the PLA is required to join any union as a condition of being employed on the Project. However, the contractor is required to have employees that have worked on the Project for eight (8) consecutive or cumulative days, pay to the applicable union dues and fees required of union membership. Any employee who is a member of a union must maintain that membership in good standing while employed on the Project.

Finally, in many places, the PLA refers and incorporates the provisions of the Master Collective Bargaining Agreement (Master Agreement) of each craft union that is signatory to the PLA. The City has received copies of the Master Agreements, but has not reviewed these voluminous documents. For this reason, staff's recommendation of the PLA should not in any way be construed to approve or endorse the Master Agreements of any of the signatory unions.

The prime contractor for this Project will be required to hold a Class A, General Engineering Contractor's License from the State of California. Given the fact that the vast majority of large, General Engineering Contractor's in California employ a union workforce, the cost implications of a PLA on this Project will be minimized. City staff therefore recommends that City Council approve the attached resolution. In so doing, staff would be directed to incorporate the PLA into the bid documents for the Project. As a part of the contract award for the Project, which is anticipated in December 2014, the PLA would become binding on the prime contractors and all subcontractors.

#### **FINANCIAL IMPACT**

It is not possible to determine the cost impacts of a PLA on this Project. Given the probability that most of the contractors on this Project will be union affiliates, City staff believes that the PLA will not have a significant impact on costs of this Project.

#### **PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION**

N/A

#### **ALTERNATIVE ACTION**

City Council could choose not to approve the PLA. Alternatively, City Council could direct staff to make changes to the existing PLA. However, if the PLA is not approved by the end of July, the City will experience additional delays that could result in the loss of funding (unless City Council directs staff to proceed without a PLA).

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Agenda Item No. 2

DATE: July 15, 2014  
SUBJECT: Resolution of the City Council Approving the Project Labor Agreement (PLA) for the Construction of the City of Fairfield Intermodal Station Project and Directing Staff to Incorporate the PLA into the Plans and Specifications for the Fairfield Intermodal Station Project

**DOCUMENTS ATTACHED**

Attachment 1: Proposed Resolution  
Attachment 2: Project Labor Agreement

**STAFF CONTACT**

George Hicks, Director of Public Works  
707-428-7493  
ghicks@fairfield.ca.gov

Coordinated with: N/A

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CITY OF FAIRFIELD

RESOLUTION NO. 2014 - 174

**RESOLUTION OF THE CITY COUNCIL APPROVING THE PROJECT LABOR AGREEMENT (PLA) FOR THE CONSTRUCTION OF THE CITY OF FAIRFIELD INTERMODAL STATION PROJECT AND DIRECTING STAFF TO INCORPORATE THE PLA INTO THE PLANS AND SPECIFICATIONS FOR THE FAIRFIELD INTERMODAL STATION PROJECT**

**WHEREAS**, the City is proposing to construct the Fairfield Intermodal Station Project ("Project"), which will include an overpass of the UPRR tracks, widening of Peabody Road to six lanes from Huntington to Vanden, installation of 6,650 feet of new track, and construction of the platform, passenger amenities and site improvements for the Train Station; and

**WHEREAS**, on February 1, 2014, the City Council expressed an interest in having staff negotiate a Project Labor Agreement ("PLA") for the Project; and

**WHEREAS**, at the April 15, 2014, City Council meeting, the City Council formally considered this issue and directed staff to enter into negotiations with the Napa-Solano Building Trades Council; and

**WHEREAS**, at the April 15, 2014, City Council meeting, the City Council adopted the following principles:

- 1) The PLA should tangibly add value to the City and the Project.
- 2) The PLA will enable the Project to consist of a workforce that will ensure the Project is completed in a timely matter.
- 3) The PLA should be flexible and ensure that the City is able to satisfy community expectations.
- 4) The PLA should not increase Project cost; and

**WHEREAS**, in addition to the principles approved at the April 15, 2014, City Council meeting, the City Council asked staff to incorporate local hire provisions and a helmets-to-hardhats program to put veterans back to work; and

**WHEREAS**, City staff has completed negotiations with the Napa-Solano Building Trades Council; and

**WHEREAS**, the draft Project Labor Agreement, in the form attached to the agenda report for this item, is generally aligned with the Council direction of April 15; and

**WHEREAS**, adoption of this Resolution would direct staff to incorporate the negotiated PLA into the bid documents for the Project, thereby making the PLA binding on the prime contractors and all subcontractors on the Project.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:**

Section 1. The Project Labor Agreement for the construction of the Fairfield Intermodal Station Project, substantially in the form attached to the agenda report for this item, is hereby approved.

Section 2. The Director of Public Works is directed to incorporate the PLA into the bid documents for the Project.

Section 3. The City Manager and Director of Public Works are hereby authorized and directed to take all steps necessary to implement this Resolution.

**PASSED AND ADOPTED** this 15<sup>th</sup> day of July 2014, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN: COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK  
PW

**PROJECT LABOR AGREEMENT  
FOR THE CONSTRUCTION OF THE  
CITY OF FAIRFIELD INTERMODAL STATION PROJECT**

This Agreement is entered into this \_\_ day of \_\_\_\_\_, 2014 by and between the City of Fairfield (hereinafter, "City"), together with contractors and/or subcontractors, who become signatory to this Agreement by signing the "Agreement To Be Bound" (Addendum A) (all of whom are referred to herein as "Contractor(s)/ Employer(s)"), and the Napa-Solano Building & Construction Trades Council ("Council") and its affiliated local Unions that have executed this Agreement (all of whom are referred to collectively as "Union" or "Unions").

WHEREAS, the City of Fairfield is developing plans and specifications entitled "Fairfield/Vacaville Train Station Project" for a proposed intermodal station to be located in Fairfield, California.

WHEREAS, the timely and successful completion of the Project (as defined herein) is of the utmost importance to City to meet the needs of City's residents and to avoid increased costs resulting from delays in construction; and

WHEREAS, the purpose of this Agreement is to promote efficiency of construction operations during construction of the Project, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project.

WHEREAS, workers of various skills will be required in the performance of the construction work, including those to be represented by Unions signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, there is the potential for work disruption, without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, City, Unions and Contractor(s)/ Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, one of the purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, thereby leading to labor disputes that could delay completion of the Project; and

WHEREAS, Contractor(s)/Employer(s) and Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by Contractor/Employer(s), and further, to encourage close cooperation among Contractor/Employer(s) and Union(s) so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between Contractor(s)/Employer(s) and affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with the collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contracts for construction work on the Project will be awarded in accordance with the applicable provisions of the Public Contract Code and other applicable California law; and

WHEREAS, City anticipates awarding only one construction contract for the Project, and anticipates that the Prime Contractor will have one or more subcontractors; and

WHEREAS, City has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contract on the Project; and

WHEREAS, City places high priority upon the employment of local area residents; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Project;.

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

**1. DEFINITIONS**

- 1.1 "Agreement" means this Project Labor Agreement.
- 1.2 "Arbitrator" means the arbitrator selected to resolve a dispute, pursuant to the provisions of Sections 4.2, 12.3 or 13.3.
- 1.3 "Business Day" means any day that City Hall of the City of Fairfield is open for business.
- 1.4 "City" means the City of Fairfield, its employees and agents.
- 1.5 "Contractor(s)/Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, and any of its contractors or subcontractors of any tier, that enters into a contract with City for the construction of any part of the Project, under contract terms and conditions approved by City and which incorporate this Agreement.
- 1.6 "Construction Contract" means the public works or improvement contract(s) awarded by City that are necessary to complete the Project, as well as subcontracts at any tier.
- 1.7 "Core Employee" means an employee who satisfies the conditions set forth in Section 8.4 of this Agreement.

1.8 "Council" means the Napa-Solano Counties Building & Construction Trades Council.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto, a copy of which shall be provided to City upon request.

1.10 "Prime Contractor" means the Contractor/Employer who enters into a Construction Contract directly with City.

1.11 "Project" means the construction of the work as shown on the plans and specifications entitled "Fairfield/Vacaville Train Station Project", as such plans are approved by the City Council of the City of Fairfield at the time of the award of the Construction Contract between City and the Prime Contractor.

1.12 "Project Manager" means the person(s) or business entity(ies) designated by City to oversee construction on the Project and to oversee the implementation of this Agreement and who works under the guidance of City's Authorized Representative.

1.13 "Subscription Agreement" means a legally adopted agreement by which a Contractor/Employer agrees to make contributions to the Trust Fund on behalf of employees.

1.14 "Trust Agreement" means the legally adopted agreement that governs a Trust Fund.

1.15 "Trust Fund" shall have the meaning ascribed in Section 9.1.

1.16 "Union" or "Unions" means the Napa-Solano Building & Construction Trades Council, AFL-CIO ("Council"), and any affiliated labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions").

## **2. SCOPE OF AGREEMENT**

2.1 **Parties:** The Agreement shall apply to and is limited to all Contractor(s)/Employer(s) performing construction contracts on the Project (including subcontractors at any tier), City, Council and its affiliated Signatory Unions.

2.2 **Project Description:** The Agreement applies to all Construction Contracts for the Project. City has the absolute right to combine, consolidate, or cancel contract(s) or portions of contract(s) identified as part of the Project. Once the Construction Contract is completed or otherwise terminated, it is no longer covered by this Agreement. For the purpose of this Agreement, the Construction Contract shall be considered completed upon acceptance of the work by City.

2.3 **Covered Work:** Subject to Sections 2.2 and 2.5, this Agreement covers, without limitation, the following:

2.3.1 All on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project, including, without limitation to the following examples: geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.2 Any start-up, calibration, performance testing, commissioning repair, and operational revisions to systems and/or subsystems performed after completion, if within the scope of the Project, unless it is performed by City employees.

2.3.3 All on-site fabrication work for the Project over which City, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work for the Project, including fabrication necessary for the Project defined herein, that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.3.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law, and by the prevailing wage determinations of the California Department of Industrial Relations. Contractor/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to City as required by bid specifications or, if not required by bid specifications, within ten (10) days of written request.

2.4 Certain National Agreements. Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 4, 12 and 13 of this Agreement shall apply to such work.

2.5 Exclusions. The following shall be excluded from the scope of this Agreement:

2.5.1 The Agreement is not intended to, and shall not affect or govern the award of public works contracts by City that are not included in the Project.

2.5.2 The Agreement shall not apply to a Contractor(s)/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative and management personnel.

2.5.3 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city or other governmental bodies or their contractors; or by public or private utilities or their contractors.

2.5.4 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.5.5 City shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code.

2.6 Award of Contracts: It is understood and agreed that City shall have the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement.

### 3. EFFECT OF AGREEMENT

3.1 By executing this Agreement, Unions and City agree to be bound by each and all of the provisions of this Agreement.

3.2 By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, Contractor/Employer agrees to be bound by each and every provision of this Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement To Be Bound in the form attached hereto as Addendum A.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of a construction contract, Contractor/ Employer shall provide a copy of this Agreement, as it may from time to time be modified, to the subcontractor and shall require the subcontractor as a precondition of accepting an award of a construction subcontract to agree in writing, by executing the Agreement To Be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a contractor may not be evaded by subcontracting.

3.4 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between Union(s) and Contractor/Employer respecting compliance with the terms of this Agreement shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s)/Employer(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including Schedule A's, which are the local Master Agreements of the Signatory Unions having jurisdiction over the work on the Project, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

#### **4. WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1 Unions, City and Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by Unions or employees employed on the Project, at the job site of the Project or at any other facility of City because of a dispute on the Project. Disputes arising between Unions and Contractor(s)/Employer(s) on other City projects are not governed by the terms of this Agreement or this Article.

4.1.2 As to employees employed on the Project, there shall be no lockout of any kind by a Contractor/Employer covered by this Agreement.

4.1.3 If a master collective bargaining agreement expires before Contractor/Employer completes the performance of the Construction Contract and Union or Contractor/Employer gives notice of demands for a new or modified master collective bargaining agreement, Union agrees that it will not strike on work covered under this Agreement and Union and Contractor/Employer agree that the expired master collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified master collective bargaining agreement is reached. If the new or modified master collective bargaining agreement provides that any terms of the master collective bargaining agreement shall be retroactive, Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining agreement which are applicable to employees who were employed on the Project during the interim, with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, Union shall give City and Contractor/Employer(s) five (5) Business Days' notice when nonpayment of trust fund contributions has occurred and two (2) Business Day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of

insufficient funds, of the intent to withhold labor from Contractor/Employer(s)' or their subcontractor's workforce, during which time Contractor/Employer shall have the opportunity to correct the default. In this instance, the affected Union's withholding of labor (but not picketing) from the Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.2 Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the party invoking this procedure shall notify Barry Winograd, as the alternate arbitrator. If neither is available, then a selection shall be made from the list of arbitrators in Section 12.3. Notice to the Arbitrator shall be by the most expeditious means available, with notices by facsimile or telephone to City and the party alleged to be in violation, and to Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of the notice, City will contact the Arbitrator designated pursuant to Section 4.2.1, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The Arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. The hearing shall be completed in one (1) session, which, with appropriate recesses at the Arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend the hearings shall not delay the hearing of evidence or the issuance of an award by the Arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of the Agreement has occurred. The Arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The Arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. A party found to be in violation of the No Strike-No Lockout provisions in Section 4.1 of this Article shall cease such violation within eight (8) hours of the award of the Arbitrator.

4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 4.2(4) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a

hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator Arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the Arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.3 Should either the permanent or the alternate arbitrator listed no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

## 5. PRE-CONSTRUCTION CONFERENCE

A pre-construction conference shall be held prior to the commencement of any work on the Project. Such conference shall be attended by a representative each from the participating Contractor(s)/Employer(s), including all subcontractors, Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will be held at least seven (7) days before the work commences. There shall be periodic meetings for the duration of the Project called by Council or the Project Manager to discuss issues relating to the construction of the Project. The Primary Contractor shall attend all such meetings.

## 6. NO DISCRIMINATION

Contractor(s)/Employer(s) and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

## 7. UNION SECURITY

7.1 Contractor(s)/Employer(s) recognize Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 No employee covered by this Agreement is required to join any Union as a condition of being employed on the Project. However, all Contractor(s)/Employer(s) shall require all employees who work on the Project on or before eight days of consecutive or cumulative employment on the Project to comply with the applicable Union's security provisions, and to maintain compliance for the period of time they are performing work on the Project, which requirement shall be satisfied by the tendering of periodic dues and fees uniformly required for union membership in the local Union that is a signatory to this Agreement. Any employee who is a member of a Union, at the time he or she is referred by the Union for work on a Construction Contract pursuant to Article 8 hereof, shall maintain that membership in good standing while employed on the Project.

7.3 Authorized representatives of Unions shall have access to the Project site whenever work covered by this Agreement is being, has been, or will be performed on the Project, so long as they comply with all reasonable safety rules, which under no circumstances shall include signing in.

## 8. REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Signatory Unions. Contractor/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by Contractor/Employer(s), Contractor/Employer(s) shall be free to obtain workers from any source. A Contractor/Employer who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article 7 of this Agreement.

8.4 The Union(s) shall be the sole source of all craft labor employed on the Project.

8.4.1 However, in the event that a Contractor/Employer(s) has its own core workforce, the Contractor/Employer may request by name, and the Union shall honor, referral of persons who have applied to the local Union for Project work and who demonstrate the following qualifications ("Core Employees"):

8.4.1.1 Possess any license and/or certifications required by state or federal law for the Project work to be performed;

8.4.1.2 Have worked a total of at least two thousand (2000) hours in the construction craft during the prior two (2) years;

8.4.1.3 Were on the Contractor/Employer's active payroll for at least the forty-five (45) consecutive business days (a minimum of 360 hours worked in the nine consecutive weeks) immediately prior to the contract award;

8.4.1.4 Have the ability to perform safely the basic functions of the applicable trade; and

8.4.1.5 Live in Napa, Solano, Contra Costa or Yolo Counties.

8.4.2 The Union will refer to such Contractor/Employer two journeyman employees from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer's Core Employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer's crew requirements are met or until Contractor/Employer has hired five (5) Core Employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s).

8.4.3 For the duration of the Contractor/Employer's work the ratio shall be maintained and when the Contractor/Employer's workforce is reduced, employees shall be reduced in reverse order and in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

8.5 It is in the interest of the parties to this Agreement to facilitate employment of City of Fairfield and Local Area residents and to use resources in the Local Area in construction of the Project. The "Local Area" shall be defined as Napa and Solano Counties, the communities to be served by the Project. It is the objective of the parties that not less than twenty-five percent (25%) of all hours worked on the Project, be worked by residents of the Local Area. Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the contractor. The parties to this Agreement support the development of increased numbers of skilled construction workers from the Local Area.

## 9. WAGES AND BENEFITS

9.1 All Contractor(s)/Employer(s) agree to pay contributions to the vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds ("Trust Funds") established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions.

9.2 By signing this Agreement, Contractor(s)/Employer(s) adopt and agree to be bound by the written terms of the legally established Trust Agreements for the Trust Funds described in Section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). Contractor(s) agrees to execute a Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

9.3 **Wages, Hours, Terms and Conditions of Employment:** The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 **Holidays:** Holidays shall be established as set forth in the applicable Schedule A.

**10. EMPLOYEE GRIEVANCE PROCEDURE**

All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

**11. COMPLIANCE**

It shall be the responsibility of Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractor(s)/Employer(s) on the Project. City shall monitor and enforce compliance with the prevailing wage requirements of the state, to the extent required by applicable law.

**12. GRIEVANCE ARBITRATION PROCEDURE**

12.1 Project Labor Disputes: All Project labor disputes involving the application or interpretation of the Master Collective Bargaining Agreement to which a signatory Contractor/Employer and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Collective Bargaining Agreement. All disputes relating to the interpretation or application of this Agreement shall be subject to resolution by the Grievance arbitration procedures set forth herein.

12.2 No grievance shall be recognized unless the grieving party (Local Union or District Council, on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) Business Days after becoming aware of the dispute but in no event more than thirty (30) Business Days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 12.1 may be extended by mutual written agreement of the parties.

12.3 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) Business Days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, or the representative of the employee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) Business Days after the meeting to resolve the dispute in Step 1, the Union and the Contractor involved shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. Union(s) shall notify its international union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting.

Meeting minutes shall be kept by Contractor. In the event that these representatives are unable to resolve the dispute, either involved party may submit the grievance in writing within five (5) Business Days to the Business Manager(s) of the affected Union(s) involved, the Manager of Labor Relations of Contractor/Employer involved or the Manager's designated representative, and the Project Manager for discussion and resolution.

Step 3: If the grievance is not settled in Step 2, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of the parties. Within five (5) Business Days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon Arbitrator for final and binding arbitration. The parties agree that if the permanent arbitrator or his alternate (as identified in Section 4.2) are not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. William Riker
2. Morris Davis
3. William Engler

Should any of the arbitrators listed above no longer work as a labor arbitrator, City and Council shall mutually agree to a replacement.

12.4 The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

12.5 The time limits specified in any step of the Grievance Procedure set forth in Section 12.3 may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

12.6 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

### **13. WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

13.1 The assignment of Covered Work will be solely the responsibility of Employer performing the work involved; and such work assignments will be in accordance with the Plan

for the Settlement of the Jurisdictional Disputes in the Construction Industry of the Building and Construction Trades Department of the AFL-CIO (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on the Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on Employers and Unions parties to this Agreement.

13.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article 5, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and the City will be advised in advance of all such conferences. The Primary Contractor shall attend all such meetings and the City and may participate if it wishes. Pre-job conferences for different Employers may be held together.

#### **14. APPRENTICES**

14.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, Contractor/Employer(s) shall employ apprentices from California State-approved Joint Apprenticeship Programs in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

14.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

#### **15. MANAGEMENT RIGHTS**

15.1 Contractor/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized. Contractor/Employer(s) shall utilize the most efficient method of techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service. Subject to applicable law and consistent with the wages

and benefits provisions in the Master Labor Agreement, there shall be no limitations on the scheduling of employees and crews.

15.2 The Construction Contract for the Project may necessitate the performance of work during all hours including weekends and holidays. The scheduling and performance of such work is hereby authorized, as long as all such work is paid consistent with wages and benefits provisions of the applicable Master Agreement. However, in no event shall an employee be disciplined for declining to work outside of his or her regularly scheduled hours.

## **16. HELMETS TO HARDHATS**

16.1 Contractor(s)/Employer(s) and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center) and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

16.2 Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, Unions will give credit to such veterans for bona fide, provable past experience.

## **17. DRUG & ALCOHOL TESTING**

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

17.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies set forth in each applicable Schedule A.

## **18. SAVINGS CLAUSE**

18.1 The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

18.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

18.3 If a court of competent jurisdiction determines that all or part of this Agreement is invalid and/or enjoins City from complying with all or part of its provisions and City accordingly determines that this Agreement will not be required as part of an award to a Contractor/Employer, Unions will no longer be bound by the provisions of Article 4.

**19. TERM**

19.1 This Agreement shall be included in the bid documents as a condition of the award of all Construction Contracts for the Project.

19.2 This Agreement shall become effective on the day it is executed by the City and the Council.

CITY OF FAIRFIELD

By: \_\_\_\_\_

Date: \_\_\_\_\_

NAPA-SOLANO BUILDING &  
CONSTRUCTION TRADES COUNCIL

By: \_\_\_\_\_  
Ben Espinoza, President

Date: \_\_\_\_\_

**[SIGNATURE BLOCKS FOR UNIONS]**

**Addendum A: Agreement To Be Bound**

[Addressee]  
[Address]  
[City and State]

Re: City of Fairfield Intermodal Station Project Labor Agreement.

Dear Mr. /Ms. \_\_\_\_\_:

The undersigned party confirms that it agrees to be a party to and bound by the City of Fairfield Intermodal Station Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this **Agreement to Be Bound**, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by the City of Fairfield Intermodal Station Project Labor Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Project Contract Number: \_\_\_\_\_

California State License Number:  
or Motor Carrier (CA) Permit Number \_\_\_\_\_

Name and Signature of Authorized Person: \_\_\_\_\_

(Print Name)

(Title)

(Signature)

(Date)



# CITY OF FAIRFIELD

Founded 1856

Incorporated December 12, 1903

## CITY MANAGER'S OFFICE

July 15, 2014

### COUNCIL

Mayor  
Harry T. Price  
707.428.7395

Vice-Mayor  
Rick Vaccaro  
707.429.6298

Councilmembers  
707.429.6298

Pam Bertani  
Catherine Moy  
John Mraz

...

City Manager  
Sean P. Quinn  
707.428.7400

...

City Attorney  
Gregory W. Stepanich  
707.428.7419

...

City Clerk  
Jeanette Bellinder  
707.428.7844

...

City Treasurer  
Oscar G. Reyes, Jr.  
707.428.7496

### DEPARTMENTS

Administrative Services  
707.428.7394

...

Community Development  
707.428.7461

...

Community Resources  
707.428.7465

...

Finance  
707.428.7496

...

Fire  
707.428.7375

...

Police  
707.428.7362

...

Public Works  
707.428.7485

Mr. Dave Harrison District 04 Representative  
Operating Engineers Local 3  
2540 N. Watney Way  
Fairfield, CA. 94533

Re: Side Letter between City of Fairfield and Operating Engineers Local Union No. 3 for the Project Labor Agreement for Construction of the City of Fairfield Intermodal Station Project

Dear Mr. Harrison:

By this letter, the Parties agree that, notwithstanding Section 2.3.1 or any other provision of the Project Labor Agreement, the City of Fairfield has the right to conduct soils and materials testing and inspection work on the Project for quality control purposes only (i.e., to verify the accuracy of soils and materials testing and inspection work performed by the Prime Contractor or a subcontractor to the Prime Contractor), by the use of either consultants or City employees. All soils and materials testing and inspection craft work conducted by the Prime Contractor (as defined in the Project Labor Agreement), or a subcontractor to the Prime Contractor, however, is covered craft work under the Project Labor Agreement per section 2.3.1.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

By: David A. White, City Manager  
For the City of Fairfield

By: Russell E. Burns, Business Manager  
For Operating Engineers Local Union No. 3

**DATE:** June 26, 2012

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Consideration of a Community Workforce Agreement with the Alameda Building and Construction Trades Council for City Public Works Projects

### **RECOMMENDATION**

That Council considers and takes appropriate action related to a potential Community Workforce Agreement (CWA) with the Alameda Building and Construction Trades Council for the City's Public Works Projects. If Council chooses to proceed with the agreement, staff has attached a resolution that would authorize the City Manager to negotiate and execute an agreement with the Building Trades Council and affiliated parties (Attachment I) based on the terms outlined on Attachments II and III. Attachment III is a side letter that would be executed concurrently with the agreement and would provide guidance for the evaluation of performance under the CWA during the term of the agreement.

### **SUMMARY**

During the establishment of the Council priorities this past winter, Council directed staff to negotiate a Community Workforce Agreement (CWA) with the Alameda Building Trades Council. Over the years, CWAs (or Project Labor Agreements, PLAs) have been utilized in the construction industry to manage labor issues related to major construction projects. Several local agencies have implemented CWAs for public works projects, including Hayward Unified School District and the City of Berkeley.

Staff has been working diligently with representatives from the Building Trades Council since March to negotiate the various terms and conditions of a potential CWA for the City of Hayward should Council wish to consider one for adoption. Attachment II outlines the terms of the proposed CWA as they have currently been negotiated. Staff and the Building Trades Council have drafted a good portion of the language for the agreement and stand poised to expeditiously execute the agreement based on Council direction. There is consensus on all terms of the agreement with the exception of language proposed in the side letter to the agreement (Attachment III). The intent of the side letter is to provide guidance regarding disputed project definitions and the criteria to be used in evaluating and analyzing the agreement.

Staff recommends that the Council first provide direction on whether they wish to enter into a CWA with the terms and conditions generally outlined in Attachment II. If yes, then staff requests input on the provisions of the side letter, particularly the language in Item 2. Again, this is the one remaining item of dispute in the negotiations. The intent of this language is to preserve the Council's right to exempt projects from the CWA that would otherwise be subject to the agreement, if staff and the Building Trades Council cannot agree on whether or not a project should be subject to the CWA.

## **BACKGROUND**

While California General Law cities are constrained by the elements of the Public Contract Code when bidding construction projects, charter cities, like Hayward, have much more latitude to establish local bidding criteria to address other legitimate municipal concerns. Some charter cities have chosen to simply adopt local hire ordinances or require the payment of prevailing wages, while others have gone a step further to adopt CWAs, or Project Labor Agreements (PLAs), to govern either individual, large scale construction projects or to more generally cover public works projects in a community. Hayward already requires the payment of prevailing wages on its public works projects. Based on Council direction during the establishment of the FY 2013 priorities, staff has been working with the Alameda County Building Trades Council over the past few months to negotiate the terms of a possible CWA covering public works projects in the City, should Council want to consider such an agreement.

Over the years, CWAs/PLAs have been utilized in the construction industry to manage labor issues related to major construction projects. They are a type of collective pre-hire bargaining agreement between project managers or owners and organized labor that outline a variety of employment and other working conditions with the express purpose of providing peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby allowing for the timely and cost-effective completion of projects. Typically, these types of agreements include the following types of provisions:

- 1) Requirements that contractors on a project use local union hiring halls to hire trades workers for the projects;
- 2) Requirements that workers pay union dues and other benefit trust fund contributions;
- 3) Management rights regarding employment procedures, including hiring, discipline, etc;
- 4) Grievance and arbitration procedures to allow for timely resolution of disputes;
- 5) Standardized work rules and regulations; and
- 6) Provisions governing requirements around apprenticeships.

CWAs also typically include a "local hire" provision, which is a probable community benefit of these types of agreements. Local hire typically means that provisions are included in the agreement that require or encourage contractors to hire local residents for governmental construction projects. For communities with significant portions of their populations employed in the building and construction trades, this can create local jobs if implemented and administered correctly and effectively. Local hire can also be implemented independently of CWAs, typically through adoption of an ordinance.

There has been significant debate over the years regarding the effectiveness of these types of agreements and the impact of these agreements on project costs. One of the fundamental characteristics of a CWA is that the agreements typically require all workers on a construction project to agree to union representation, thereby clearly identifying a bargaining representative. This raises a key concern with these types of agreements, namely that the number of contractors bidding on jobs will be reduced because non-union contractors will have a more difficult time meeting the requirements of the CWA in a cost-competitive manner. CWAs do not preclude non-union contractors from bidding on projects, but it does require them to consent to the terms and conditions spelled out in the agreement.

The reduced competition resulting from a lower number of potential bidders on a project has led to the argument that this increases project costs. Some studies have indicated that reduced competition can lead to potential cost increases of between 10-13%<sup>1</sup>. However, this is an issue that has been analyzed and debated on both sides with no clear and definitive conclusions. Recent Bureau of Labor Statistics figures indicate that, nationally, only 13% of the labor force is represented by unions. This fact clearly needs to be weighed against the other possible benefits stemming from a CWA.

Locally and throughout the state, cities and other public agencies have had a wide range of experiences with CWAs or PLAs. At the Federal level, these types of agreements were entirely prohibited on federal and federally funded construction projects from 2001 to 2009 pursuant to Executive Order. In 2009, a new Executive Order was issued that encouraged PLAs on large-scale construction projects where the total cost to the Federal Government is \$25 million or more. These types of agreements have been historically used on larger scale construction projects until recently when some cities have negotiated agreements to apply more broadly to smaller public works projects on a citywide basis.

The Hayward Unified School District adopted such an agreement in June 2009 to apply specifically to five school construction and modernization projects funded by Measure I bond funds. This agreement has been held up as a successful example that has met the key objectives of the agreement, including exceeding the 40% local hire goal as established in the agreement. Another local agreement that is more consistent with the type of agreement staff has been negotiating is the agreement adopted by the City of Berkeley in January 2011. The Berkeley agreement applies to City public works projects exceeding \$1 million for a term of three years. The Berkeley agreement includes a side letter that indicates the agreement will be reviewed after one year based on certain criteria and that the project cost threshold for application of the CWA could be lowered to \$250,000. The Berkeley agreement also requires contractors to make contributions to fund the implementation and management of the local hire program based on the number of hours worked on a project, allowing the City to recapture a portion of the administrative costs required to implement these types of agreements.

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<sup>1</sup> Vasquez, Glazer, Bruworld, 2011. *Measuring the Loss of Project Labor Agreements on School Construction in California*. National University's Institute on Policy Research.  
<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>

The Berkeley City Council recently completed their one year review of the CWA and decided to extend the \$1 million threshold for another year because the local hire goals in the agreement were not met during the initial evaluation period. Staff has discussed the successes and challenges of both the HUSD and Berkeley agreements with staff from both agencies. These two agreements have largely formed the basis for the negotiations Hayward staff has undertaken with the Building Trades over the past few months.

## **DISCUSSION**

As mentioned above, staff has been working diligently with representatives from the Alameda Building Trades Council to negotiate the various terms and conditions of a potential CWA for the City of Hayward should Council wish to consider one for adoption. Attachment II outlines the most recent terms of the proposed CWA that have been negotiated. Staff and the Building Trades Council have drafted a good portion of the language for the agreement and stand poised to expeditiously execute the agreement based on Council direction. There is consensus on all terms of the agreement with the exception of language proposed in the side letter to the agreement. The intent of the side letter is to provide guidance regarding disputed project definitions and the criteria to be used in evaluating and analyzing the agreement.

Staff recommends that the Council first provide direction on whether they wish to enter into a CWA with the terms and conditions generally outlined in Attachment II. If yes, then staff requests input on the provisions of the side letter, particularly the language in Item 2. This is the one remaining item of dispute in the negotiations. The intent of the language in side letter Item 2 is to preserve the Council's right to exempt projects from the CWA if staff and the Building Trades Council cannot agree on whether or not a project should be subject to the agreement.

Further discussion of the terms of the proposed CWA and the side letter follows.

### General CWA Terms and Conditions:

Term: Staff is proposing an initial agreement term of eighteen months. This will provide an opportunity to implement the CWA on several projects and to evaluate the subsequent experiences and data.

Covered Projects: If a project is funded by the General Fund or Enterprise Funds and the estimated construction contract cost is more than \$1 million, the project would be subject to the CWA. This includes on-site construction, demolition, site preparation and construction trucking work. Off-site fabrication and other specialty work would be covered by the CWA if this work is covered under an existing master labor agreement between the trade unions and contractor representatives. The CWA would only apply to projects awarded by the City and not projects awarded/managed by another third party public agency where the City has contributed funding. The City retains the right under the CWA to award the contract to the lowest responsible bidder.

In addition, if the City is successful in passing a bond measure to fund major infrastructure work during the term of the agreement, the CWA would apply to all projects funded by the bond, regardless of project cost (the \$1 million threshold would not apply).

No Work Stoppages, Job Actions, etc. By entering into this agreement, the Unions would agree that there will be no strikes, sympathy strikes, work stoppages, slowdowns of any kind, picketing, hand billing or other methods of advising the public that there is a labor dispute at a job site or other City facility because of a dispute on the project. There is an exception to this that allows the Unions to withhold labor from the project if a contractor fails to pay contributions to Union trust funds.

Union Hiring Hall: Contractors working on projects covered by this agreement must agree to abide by the requirements and referral systems of the respective Union hiring hall when filling jobs on a project. Contractors retain the right to reject any applicant referred to them and, if the Union referral facilities are unable to fill the requirements of the contractor within 72 hours of a request being made, the contractor can obtain employees from other sources. In addition, the contractor can utilize a certain number of its "core" construction employees (capped at five per contractor or subcontractor) on projects, provided that the contractor utilizes one employee from the Union referral system for each "core" employee hired up to the cap.

Local Hire: There would be a goal in the agreement that 30% of the hours worked on a project be performed by Hayward residents and/or HUSD graduates, through good faith efforts. Contractors would also be required to hire one Hayward resident as a "first period apprentice" for the first \$1 million of construction costs with one additional apprentice for every \$5 million thereafter (capped at two per craft). If contractors fail to meet the 30% threshold, a 10% contract retention is withheld until the deficiency is remedied. There are numerous methods by which a contractor could remedy this situation including a determination that the contractor is a non-qualified bidder for future work, the contractor commits to employing Hayward residents on non-City projects, and the acceptance of Hayward residents as new apprentices. Local hire provisions cannot apply to any Federally-funded transportation projects under the Federal Highway Act, regardless of the contract amount. As described below, a Joint Administrative Committee would be responsible for monitoring and enforcing the local hire provisions.

Joint Administrative Committee: The CWA would be implemented by a five-member Joint Administrative Committee comprised of two union representatives, two City representatives, and a contractor representative. The Committee would meet quarterly to review CWA and project compliance.

Substance Abuse Policy: Pursuant to the requirements of SB 922, there must be a substance abuse policy adopted in conjunction with any CWA. This proposed CWA requires Unions to abide by the testing policies established in their respective master labor agreements. If no such policy exists, then the City's policy (as attached to the agreement) would be implemented.

Side letter and CWA Evaluation Period: Throughout the negotiations, staff has been mindful of numerous concerns related to the CWA, both real and perceived. These concerns include, among others: administrative burden on City project managers related to implementation and monitoring of the CWA; effectiveness of the local hire provisions; and potential impacts on number of bidders per

contract and increased costs for projects. If the Council directs staff to proceed with the CWA, the Building Trades Council and staff have negotiated a side letter to the above described agreement that would allow staff to return to Council after eighteen months of experience with the CWA to reevaluate the impacts and effectiveness of the agreement. As part of this evaluation, the Building Trades would like to revisit the dollar threshold of projects to which the CWA applies. The eighteen-month timeline would likely allow sufficient time for an analysis of the implementation of the CWA. Attachment III provides the draft language for the side letter and outlines the specific criteria upon which staff and the Building Trades Council will evaluate the effectiveness of the Hayward CWA.

As mentioned earlier in the report, staff and the Building Trades have reached agreement on the key deal points of the agreement with the exception of the language in Item 2 of the side letter (Attachment III). Given that staff has not implemented this type of agreement before, staff has concerns that there may be projects that arise during the term of the agreement where implementation of a CWA may not be in the best interest of the City or the community for a variety of reasons. Staff proposes to retain the right to ask the Council to exempt a project from the CWA if the circumstances warrant. Under the proposed language, staff and the Building Trades would meet in good faith to discuss the exemption. However, if the parties fail to reach a consensus, staff would be able to bring the project to the Council for review and consideration. Staff does not anticipate utilizing this mechanism very often for a couple of reasons. First and foremost, there will likely be limited examples where projects would need to be exempted from the CWA. Secondly, the desired goal would be to reach consensus with the Building Trades on these exemptions without the necessity of bringing the items to Council for direction. The Building Trades have requested that there be mutual consent between the parties on any exemption, necessitating Building Trades approval of an exemption and precluding the City Council from making a final determination in cases where there is any dispute.

## **ECONOMIC AND FISCAL IMPACT**

There has been much debate over the years regarding the fiscal impacts of CWAs/PLAs. There are academic studies on both sides of the issue indicating that the application of CWAs does or does not add costs to construction projects. Staff's primary concern related to the CWA is the administrative burden on City project managers for implementing and monitoring the agreement. As such, one criteria for review of the CWA after eighteen months will be the administrative costs of implementing the CWA (defined in the side letter). Staff will track time spent implementing the CWA, which will become part of the analysis of the agreement at the end of the initial eighteen month term.

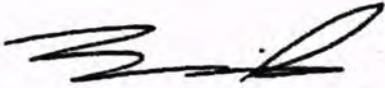
Another key concern is that the CWA will reduce the number of bidders on projects, thereby increasing the contract costs. To address this concern, staff and the Building Trades have negotiated Item 3 in the side letter, which allows staff to rebid the project if there are less than three responsive Bay Area bidders, the bids exceed the engineer's estimate by 10% or more and there is evidence (anecdotal or other) that the reason for the low number of bids is the CWA.

## **NEXT STEPS**

If the Council so directs, staff will proceed to finalize negotiations on the CWA based on the direction provided by Council and the City Manager will execute the agreement. Once the agreement is executed, Public Works staff would implement the elements of the CWA and then report back to Council within eighteen months of execution on the elements outlined in the side letter.

*Prepared by:* Kelly McAdoo Morariu, Assistant City Manager

Approved by:



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Fran David, City Manager

Attachments:

Attachment I:	Resolution
Attachment II:	Potential CWA term sheet
Attachment III:	Side letter regarding review of CWA

ATTACHMENT I

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO  
NEGOTIATE AND EXECUTE A COMMUNITY  
WORKFORCE AGREEMENT WITH THE ALAMEDA  
BUILDING AND CONSTRUCTION TRADES COUNCIL,  
LOCAL UNIONS AND CONTRACTORS

WHEREAS, the successful completion of the City's construction projects is of utmost concern to the City Council; and

WHEREAS, the interests of the public, the City, contractors and the Alameda Building and Construction Trades Council and its affiliated unions (collectively the "Building Trades Council") are best served when construction proceeds in an orderly manner without disruption by strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interference with work; and

WHEREAS, it is in the best interest of the City and its residents to enter into a Community Workforce Agreement with contractors who are awarded certain public works projects and for the Building Trades Council to provide stability on said projects and employment and training opportunities for Hayward residents; and

WHEREAS, under the proposed Community Workforce Agreement, the City has the absolute right to award its public works contracts to the lowest responsive and responsible bidder; and

WHEREAS, State law authorizes the use of project labor agreements, such as the proposed Community Workforce Agreement, provided that the agreement includes specific taxpayer protections, which provisions have been incorporated into the proposed Community Workforce Agreement.



ATTACHMENT II  
 COMMUNITY WORKFORCE AGREEMENT (CWA) – KEY DEAL POINTS  
 City of Hayward  
 June 26, 2012

<b>CWA Subject Areas</b>	<b>City of Hayward Proposal</b>
<i>Projects Covered by the CWA</i>	<p>If funded by infrastructure bonds, all new construction covered – no \$ threshold on these projects. If funded by General Fund and Enterprise Funds, all new construction costing more than \$1 million.</p> <p>On-site construction, demolition, site preparation, construction trucking work (e.g., delivery of ready-mix, asphalt, etc.) covered.</p> <p>Repair and maintenance of City facilities not included unless it meets the threshold criteria.</p> <p>Off-site fabrication included if this work is legally covered in existing Master Agreements on the day the CWA is signed.</p> <p>Specialty work included, e.g, software, traffic signal controllers, if this work is legally covered in Existing Master Agreements on the day the CWA is signed.</p> <p>City retains right to award to lowest responsible bidder.</p> <p>If fewer than 3 responsive and responsible Bay Area contractors respond to request for bid, then City reserves the right to use nonunion labor – <i>to be addressed in Side letter</i></p> <p>Only applies to projects awarded by City.</p>
<i>Parties Bound by CWA</i>	<p>All signatory union and all contractors and their subcontractors bound by the terms of CWA.</p>

ATTACHMENT II  
COMMUNITY WORKFORCE AGREEMENT (CWA) – KEY DEAL POINTS  
City of Hayward  
June 26, 2012

<b>CWA Subject Areas</b>	<b>City of Hayward Proposal</b>
<i>Work Stoppages</i>	<p>No work stoppages, strikes, sympathy strikes, slowdowns or lockouts during term of CWA.</p> <p>Union can withhold labor (but not picket) for contractor nonpayment of union trust fund contributions.</p>
<i>Arbitration</i>	<p>All disputes/grievances subject to arbitration by pre-selected arbitrators.</p> <p>Expedited arbitration and liquidated damages for disputes over strikes, lockouts, nonpayment of trust fund contributions.</p> <p>All other disputes/grievances subject to meet and confer process followed by arbitration.</p>
<i>Work Force/ Core Employees</i>	<p>Except for contractors' core employees, all workers shall be provided by through unions' referral hall process. Contractor has right to reject an individual referral.</p> <p>Employees referred through unions must pay union dues, fees, pension-fund type benefits; not required to join union.</p> <p>Contractors can use their own management, administrative staff and "core employees" as defined in CWA.</p> <p>Number of core employees per contractor and subcontractor is 5 each with no residency requirements for core employees.</p>

ATTACHMENT II  
 COMMUNITY WORKFORCE AGREEMENT (CWA) – KEY DEAL POINTS  
 City of Hayward  
 June 26, 2012

<b>CWA Subject Areas</b>	<b>City of Hayward Proposal</b>
<i>Local Hire/ Apprenticeships</i>	<p>30% of hours worked on a CWA project shall be performed by Hayward residents and/or HUSD graduates, through good faith efforts.</p> <p>If fail to meet 30% threshold, 10% contract retention is withheld until deficiency is remedied. Acceptable remedies include: determination that Contractor is non-qualified bidder; commitment to employ Hayward residents on non-City projects; acceptance of Hayward residents as new apprentices.</p> <p>Contractor required to hire one Hayward resident as “first period apprentice” for the first \$1 million of construction costs with one additional apprentice for every \$5 mm thereafter (capped at 2 per craft). Good faith efforts to retain the apprentices required.</p> <p>Parties shall cooperate to establish a pre-apprenticeship/internship program for HUSD graduates.</p>
<i>Term</i>	<p>18 months from date of execution with language to evaluate and revisit agreement for possible extension near end of term. Side letter will address review criteria.</p>
<i>Implementation of CWA</i>	<p>CWA implemented by 5-member Joint Administrative Committee comprising union representatives, contractor representatives &amp; City representatives; meet quarterly to review CWA and project compliance.</p> <p>5-members include: 2 City reps; 2 Union reps; and 1 contractor rep mutually selected by City and</p>

ATTACHMENT II  
COMMUNITY WORKFORCE AGREEMENT (CWA) – KEY DEAL POINTS  
City of Hayward  
June 26, 2012

<b>CWA Subject Areas</b>	<b>City of Hayward Proposal</b>
	Trades Council.
<i>Wages/Benefits</i>	Established by unions and prevailing wages.
<i>Substance Abuse Prevention</i>	Required by state law. Unions will be required to abide by testing policies established by their respective Master Agreements. If there is no drug policy in the Master Agreement, the CWA drug policy would go into effect.

Letter Agreement

June 22, 2012

Building and Construction Trades Council of Alameda County  
Re: Letter of Agreement for Community Workforce Agreement

Dear \_\_\_\_\_:

Over the past six months, representatives of the City of Hayward and the Building and Construction Trades Council of Alameda (collectively the "Parties") met to negotiate the terms of a Community Workforce Agreement ("CWA"). This Side Letter is executed to set forth the Parties' agreement regarding the implementation of the certain terms of the CWA.

The Parties agree:

1. Initially, only construction projects, as that term is defined in the CWA, whose value as estimated by the City exceeds One Million Dollars (\$1,000,000), will be covered by the CWA.
2. City staff reserves the right to seek approval from the City Council that a project that would otherwise be covered under the CWA be exempted from the provisions of the CWA. Prior to pursuing such approval, the City will notify the Building Trades Council of its intent to seek an exemption for the project and provide reasonable opportunity to meet in good faith to discuss the proposed exemption.
3. If fewer than three (3) responsive and responsible Bay Area-based contractors respond to the request for bids for a project, the City reserves the right to re-bid the project without the project being subject to the terms of the CWA and would notify the Building Trades Council pursuant to (2) above. In addition, the bids received must exceed the engineer's estimate by 10% or more and there must be an indication (anecdotally or otherwise) that the number of bids was a result of the CWA being applied to the project.
4. No later than 18 months after the effective date of the original CWA, the Parties will meet to discuss and analyze the overall effectiveness of the CWA, whether to continue the agreement, and whether to lower the One Million Dollars (\$1,000,000) threshold amount using the following criteria: (a) the number of jobs created for Hayward residents on CWA-covered projects; (b) whether the administrative costs of implementing the CWA exceeded one percent (1%) of the costs of construction contracts covered by the CWA; and (c) whether there has been an impact on awarding contracts or subcontracts to Hayward-based businesses as a result of the CWA.
5. The City Manager will present the results of the analysis to the City Council within a reasonable time after the Parties have met and discussed the analysis and, based on the outcome of the analysis, will present a recommendation to the City Council as to whether the City should lower the One Million Dollar (\$1,000,000) threshold.



## CITY COUNCIL REPORT 2014-\_\_\_\_\_

XX

**DATE:** OCTOBER 28, 2014  
**TO:** MAYOR AND COUNCIL  
**FROM:** BELINDA B. ESPINOSA, CITY MANAGER  
**SUBJECT:** PROJECT LABOR AGREEMENTS

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### **BACKGROUND**

The City of Pinole is currently undertaking an upgrade of the Pinole-Hercules Wastewater Plant. That upgrade which is estimated to cost \$42 million is now in the final engineering phase. Once engineering is completed (estimated to be in late Fall), Staff will begin the process of preparing bids and specifications in order to advertise the project for bid at the first of the new year (2015).

Some members of the City Council recently requested information about Project Labor Agreements and whether or not the City should be considering one for this project. In response, the City Attorney prepared a presentation on September 30, 2014 in order to provide the City Council with an overview of what a Project Labor Agreement is and what are the elements of such an agreement as well as any pros and cons of the issue (see Attachment A).

As a result of that discussion, Staff was provided a number of questions to research and report back to the City Council in order to continue the discussion. Staff provided the answers to those questions at the October 7, 2014 City Council meeting. There were still some outstanding questions that remained to be answered and some that needed clarification (see Attachment B).

Staff is not making a recommendation on this topic as this is strictly a City Council **policy decision**. While no vote is being requested of the City Council at the October 28 meeting, one will be scheduled for the November 4 meeting unless otherwise directed by the City Council. Staff will conduct the remaining process in accordance with the direction provided by the City Council on November 4.

### **REVIEW AND ANALYSIS**

Staff met and interviewed representatives from the Contra Costa County Building and Construction Trades as well as the Associated Builders and Contractors to determine their point of view on the subject questions. In addition, Staff interviewed various agencies (both in person and by telephone) who have experience with Project Labor Agreements for actual project(s).

There are four main issues that are central to the discussion regarding Project Labor Agreements. Included are:

- Does a Project Labor Agreement increase the cost of the project and if so how?
- Does a Non Union Contractor Pay Twice for Retirement and Health Benefits?
- What is Local Hiring under a Project Labor Agreement?
- Will the City receive an adequate number of bidders to assure a competitive price with a Project Labor Agreement?

**DOES A PROJECT LABOR AGREEMENT INCREASE THE COST OF THE PROJECT AND IF SO, HOW?**

Staff did not have enough time or the resources to fully investigate this question. However, as a side note for information only, Staff has included a copy of the "Labor Stability Analysis for the Los Vaqueros Reservoir Expansion Project" which was completed in 2010 (see Attachment C). The Contra Costa Water District commissioned this study to determine whether Project Labor agreements had increased cost or discouraged bidders on bidding a project under a Project Labor Agreement. The District utilizes Project Labor agreements for large complex projects. This analysis determined that utilizing a Project Labor Agreement did not limit bidding competition or increase project costs.

We have identified a couple of areas where a Project Labor Agreement might increase the cost of a project. Included are:

- **Contracted Labor Negotiator**

If the City Council directs that a Project Labor Agreement is required for the Wastewater Treatment Plant Project, a contracted labor negotiator will be required. Current staff and the City Attorney's office do not have experience in this area of expertise.

- **Development and Legal Review of the Project Labor Agreement**

There are numerous Project Labor Agreements throughout the county and from other entities that can be used as "template" for the agreement. However, each Project Labor Agreement has unique characteristics specific to the project that have

to be negotiated and reviewed by the City Attorney. There may be other points that are desired to be placed in the Project Labor Agreement.

- **Administration and Monitoring of the Project Labor Agreement**

Once a Project Labor Agreement is in place, it does require someone who can administer and monitor the deal points included in the agreement. Some of these include:

- Monitoring contractor compliance with terms of the Project Labor Agreement;
- Monitoring and enforcing Local Hiring requirements including resolving all claims of non compliance;
- Ensuring that non-union contractors deduct union initiation fees and union dues from all non union employees;
- Monitoring and assuring that the contractor is hiring under the union hall rules and the ratio of core workers to non- core workers is appropriate;
- Negotiating any amendments to the Project Labor Agreement;
- Tracking and recording all required reports and notices; and
- Monitoring and resolve disputes, grievances, and disagreements

At the current time, we have contracted with Carollo Engineers to perform construction management activities for the wastewater upgrade project. Carollo could also conduct the administration and monitoring of a Project Labor Agreement if the City Council directs that we enter into one for this project.

Some of these activities are included in the current contract with Carollo Engineers, however it is estimated that it would cost an additional \$20,000-\$50,000 over the life of the two year project for Carollo to conduct the services that is not in the current contract.

- **Use of the "Core Worker" Concept**

The Project Labor Agreement can specify that a contractor/subcontractor is allowed to have a certain number of core employees. This does not include management or employees such as Superintendents, Foremen and those with expertise specific to the contractor's means and methods and outside of the construction trades. If at certain times, the project requires more than the number of allowable core

employees, the contractor may be required to follow a specific agreed upon procedure to fill the remaining positions from the local Union Hall. This procedure is negotiated through the Project Labor Agreement.

- **DOES A NON UNION CONTRACTOR PAY TWICE FOR RETIREMENT AND HEALTH BENEFITS?**

Several questions have arisen over whether or not a Non Union Contractor pays twice for benefits under a Project Labor Agreement. This depends on several factors and is determined during the negotiation process of the Project Labor Agreement.

Prevailing Wage does not require making payments into fringe benefits plans. The Employer may pay the fringe benefits directly to the employee through his payroll check. Workers need only be paid the total prevailing wage.

However, in the case of a Project Labor Agreement, when a Non-Union Contractor already provides for and contributes to a retirement and health program, there may be additional costs to the contractor that could be included in the bid response. Outlined below are two scenarios under which a Non Union Contractor under the Prevailing Wage requirements addresses retirement and health benefits.

- **If a Non Union Contractor does not provide these benefits**

Under a Project Labor Agreement, the Non-Union Contractor who does not pay these benefits still has to pay the cash value of retirement under Prevailing Wage. In this case, the Non-Union Contractor under a Project Labor Agreement pays this portion of Prevailing Wage into the Union Trust Fund on behalf of the non-union employee or can he/she can pay it to the employee in cash. These terms have to be negotiated.

- **If a Non Union Contractor already provides these benefits**

Under a Project Labor Agreement, a Non-Union Contractor who already provides retirement benefits for his/her employees still has to pay an amount equivalent to the prevailing wage schedule. Using the classification of Carpenter, which requires \$9.20/hour/employee for retirement, a Non Union Contractor must pay this amount into the Union Trust Fund on behalf of the employee or can pay it directly to the employee. These terms have to be negotiated.

The Non-Union Contractor must now decide whether or not to continue paying for his/her employee on their own retirement plan and if he/she decides to do so may result in the employee receiving less of a retirement benefit. The employee would only receive the retirement benefit from the Union Trust Fund if he is "vested" in the system.

It has been alleged that this could result in a reduction in the number of bidders who do not want to bid a Project Labor Agreement project under these conditions and/or a higher cost in the bid responses to accommodate paying twice for the same benefit.

- **WHAT IS LOCAL HIRING UNDER A PROJECT LABOR AGREEMENT?**

A Project Labor Agreement is a mechanism that can increase local hiring efforts. The Project Labor Agreement will specify how a contractor assembles their workforce. The Project Labor Agreement can also include establishing "bands of local areas" whereby specific regions are established as priority areas from which local workers are hired. Another words, the City Council might want to negotiate for union hall workers from West Contra Costa County first and then Contra Costa County and so on.

As mentioned above, under a Project Labor Agreement it can be negotiated to allow the Non-union Contractor to have a certain number of core employees on the project below the Superintendent and Foreman levels. Most contractors, Union and Non-union carry a certain number of key or core employees. If at certain times, the project requires more than the number of allowable core employees, the contractor may be required to follow a specific agreed upon procedure to fill the remaining positions from the local Union Hall. This procedure is negotiated through the Project Labor Agreement.

This is subject to negotiation in the Project Labor Agreement process. Generally, the local hiring process could include an agreed upon formula or ratio of core workers and union hall workers.

- **WILL THE CITY RECEIVE AN ADEQUATE NUMBER OF BIDDERS TO ASSURE A COMPETITIVE PRICE?**

There are two sides to this issue. Just as many people interviewed responded yes and no. For a project this size, a substantial contractor will be required. One who can meet all of the pre-qualification requirements and provide the insurance and bonding that are required for the project.

This is also a specialty project in that we will be requiring a contractor with water/wastewater experience. Carollo is confident that we should receive no less than 7 bidders. These bidders will most likely come from more than just our region given the size of the project.

Contractors of this size most likely will have experience working under a Project Labor Agreement. However, the sub-contractors may have less or no experience working under a Project Labor Agreement. We will not know until we bid the project.

If the City Council determines that we have not received an "adequate" number of bidders, and thus not a competitive enough price, we can rebid the project.

**ATTACHMENTS**

Attachment A	City Attorney Power Point Presentation-September 30, 2014
Attachment B	Questions Regarding Project Labor Agreements (Revised)
Attachment C	Contra Costa Water District "Labor Stability Analysis for the Los Vaqueros Dam Project"

**Attachment B**  
**Revised**

**Questions Regarding Project Labor Agreements**  
**October 7, 2014 City Council Meeting**  
**October 28, 2014 Special meeting**

***Q 1: What will the attorney's fees cost?***

***Response:***

At this time, if Staff were directed to use a Project Labor Agreement that would necessitate hiring outside counsel and an outside labor negotiator. It is estimated that based on the size of the project, attorney's fees could be in the range of \$15,000 to \$20,000. We are currently researching the cost of labor negotiator.

It is important to note, that neither the City Staff nor the City Attorney have experience in negotiating Project Labor Agreements.

***Q 2: Does a Project Labor Agreement add to the cost of a project?***

***Response:***

At this time, we have no validation that a Project Labor Agreement increases the project costs. It is correct that both non-union and union contractors have to pay prevailing wage on the project.

It is important to note that "prevailing wage" is determined by the State Department of Industrial relations for various classifications in the trades and includes base salary plus fringe benefits such as retirement, health insurance, vacation, holiday pay and training. If a non-union contractor provides these programs on behalf of their employee(s), then there may be an additional expense to him/her if he/she decides to pay the difference in the cost between what he/she provides and on the Prevailing Wage Schedule.

***Q 3: How would extra costs, if any be funded; through the General Fund or the Wastewater Fund?***

***Response:***

Any costs related to the project are a part of the project costs and as such would be funded from the Wastewater Fund.

**Q 4: *Would the City of Hercules as our partners in the project pay their share of these costs?***

**Response:**

All costs associated with the project will be shared on a 50/50 basis.

**Q 5: *Is it true that cost overruns and change orders are a result of Project Labor agreements?***

**Response:**

There is no evidence that this is true. Any project whether union or non-union, under a Project Labor Agreement or not, can have cost over runs and change orders. It is anticipated that our project will have change orders due to the fact that we will be operating the plant at the same time we will be rebuilding a new one, the limited footprint of the space on which to do so, and all of the unknowns underneath the plant once construction begins.

**Q 6: *Can you have a Prequalification Process with a Project Labor Agreement?***

**Response:**

You can have a Pre Qualification process with or without a Project Labor Agreement. They are independent agreements. The City Staff is planning on a Prequalification process for the general contractors that will be bidding on the project. That process includes criteria, but not necessarily limited to the following categories:

1. Financial Solvency
2. History of Claims and Litigation
3. Prevailing Wages
4. Project Experience
5. Safety Record

**Q 7: *Does a Prequalification Process increase the cost of a project?***

**Response:**

No it does not increase the cost of the project but might increase the cost of staff time to perform the pre-qualification process which has been our process on most major complex projects.

**Q 8: Can you have a Project Labor Agreement that pays less than or more than prevailing wages?**

**Response:**

Project Labor Agreements require the payment of no less than prevailing wages.

Workers on most federal, state and local government projects, including ours must pay prevailing wages at a minimum. The Wastewater Treatment Plant Upgrade Project will be required to be at prevailing wage. Carollo and Associates will be responsible for monitoring this process and doing their best to assure that the General Contractor and all subcontractors are paying all trade classifications under the appropriate prevailing wage schedule. They will be monitoring all payroll records prior to them being submitted to the State.

Because the City is planning on using State Revolving Loan Funds to finance the project, it will also be a requirement of the loan that the City follows Davis-Bacon (which established prevailing wage). In fact, there may be an additional audit that the State will perform as they have their own Davis-Bacon representative.

**Q 9: If Project Labor Agreements increase costs, where do increased project costs come from?**

**Response:**

We have found that Project Labor Agreements may increase project costs related to three areas: Labor Negotiator, Legal Review and Project Labor Agreement Administration and Monitoring under certain circumstances. Specifically, increased costs are related to hiring a contract labor negotiator and for legal review of the agreement. The City will bear the costs of the additional attorney's fees for development and the contracted labor negotiator (development and review of the Project Labor Agreement) should the City Council approve entering into one.

In addition to the above, the only other area is related to whether or not the non-union contractor provides retirement and health benefits. If a non-union contractor decides to continue paying these programs on behalf of their employee(s), then there is an additional expense to him/her. If there is a difference between what the Prevailing Wage Schedule requires and what the contractor provides, the contractor has to pay the difference either into the Union Trust Fund or directly to the employee. This has to be negotiated.

**Q 10: How many labor unions would be included on the project and a signatory to a Project Labor Agreement?**

**Response:**

At the present time, we believe there will be at least twelve labor unions. However, there will only be one Project Labor Agreement which would be negotiated with the Contra Costa County Building and Construction Trades as they represent all of the trades. Included would be:

Plumbers/Pipefitters	Operating Engineers
Electricians	Sheet Metal Workers
Carpenters	Laborers
Ironworkers	Cement Masons
Painters	Surveyors
Teamsters/Truck Driver	Pile Driver (possibly attached to operating engineers)

**Q 11: Will there be individual Project Labor Agreements for each of the trades on the job or one Project Labor Agreement that encompassed terms and conditions for all of the represented labor on the project?**

**Response:**

No, there will be one Project Labor Agreement however all of the trade unions are signatory to that document through the Contra Costa County Building and Construction Trades.

**Q 12: Was there a Project Labor Agreement when Pinole City Hall was built?**

**Response:**

In 1996, the City Council adopted a Project Labor Agreement for the City Hall project. A general contractor, West Coast Contractors, filed a petition for writ of mandate challenging the Project Labor Agreement on the grounds that the Council lacked the authority to require one. The Court considered the case and held that the Project Labor Agreement was illegal under existing law (1996).

In summary, West Coast won. At that time, there was apparently no California case law on point, and the trial court looked to federal law. A writ was issued, ordering the City to nullify the Project Labor Agreement requirement.

In 1997, the law changed. The trade council (labor union group) petitioned for reconsideration based on *Associated Builders & Contractors, Inc. v. San Francisco*

*Airports Com.*, 59 Cal. App. 4<sup>th</sup> 25 (1997), but the trial court denied the petition. Courts are not inclined to grant retroactive review of decisions that were already made in the past, especially where the project was already under construction. In short, the City lost the case and had to pay attorney's fees to West Coast contractors.

The City filed an appeal on the attorneys' fees award, *West Coast Contractors, Inc. v. City of Pinole Redevelopment Agency*, A082935, in the first appellate district. The Court of Appeal cut the attorneys' fees in half. But it did not (and could not) reconsider the issue of the project labor agreement. The City was represented by former City Attorney David Levy, among others.

If this case were decided today, the decision would be in favor of a Project Labor Agreement due to the changes in the law since 1997, including the adoption of the Public Contract Code Section 2500, which I presented to you last Tuesday.

**Q 13: Were there Project Labor Agreements on any public projects in Contra Costa County and if so, what was the overall satisfaction with it (on time, within budget, number of change orders)?**

**Response:**

Yes there are quite a few Project Labor Agreements throughout Contra Costa County and in several areas of our region. It appears that Project Labor Agreements have been used numerous times by the Contra Costa County Board of Supervisors, West Contra Costa Unified School District, Contra Costa Community College District, and Contra Costa Water District among others. Please see below the results of a short survey that was taken by Staff.

**Sanitation/Water/ Wastewater Districts**

- |   |     |
|---|-----|
| • Central Sanitation District                           | No  |
| • Central Marin Sanitation District                     | No  |
| • Contra Costa Water District                           | Yes |
| • Diablo Water District (Treats City of Oakley)         | No  |
| • Ironhouse Sanitation District (Treats City of Oakley) | No  |
| • West County Wastewater District                       | No  |
| • Stege Sanitation District (Treats El Cerrito)         | No  |
| • Crockett Community Services District                  | No  |

**School/College Districts**

- |  |     |
|--|-----|
| • Contra Costa County                              | Yes |
| • Contra Costa Community College District          | Yes |
| • West Contra Costa County Unified School District | Yes |

**Municipalities**

- |                        |               |
|------------------------|---------------|
| • City of Brentwood    | Yes           |
| • City of Concord      | Yes           |
| • City of El Cerrito   | No            |
| • City of Hercules     | Yes           |
| • City of Martinez     | Working On It |
| • City of Oakley       | No            |
| • City of Richmond     | Yes           |
| • City of San Pablo    | Working On It |
| • City of Walnut Creek | No            |

**NEW QUESTIONS AS OF OCTOBER 8, 2014**

***Q 14: Do non-union workers become union members when there is a Project Labor Agreement? Do they have to pay union dues?***

***Response:***

No, they do not automatically become a union worker nor do they have to become one because they are working on the project. Forcing someone to become a union member is against the law. If they are non union members, they do have to pay dues because they will be dispatched from the union hall.

***Q 15: If there is an increase in negotiated wages after the Project Labor Agreement is signed and the contract awarded, who pays for this?***

***Response:***

The Contractor has to absorb the cost and cannot increase contract price. This is the same as the Contractor having to absorb unanticipated costs for materials, supplies and gasoline, etc.

***Q 16: Is it true that Non-union Contractors on a project covered by a Project Labor Agreement have to pay into the Union Retirement Fund?***

***Response:***

No. The Contractor has to pay these benefits on the employee's behalf into the Union Trust Fund. Under a Project Labor Agreement union and non-union workers are dispatched through the local Union Hall. These benefits are required under the Prevailing Wage Schedule. Both union and non-union employees are all covered by the same vesting rules governing eligibility to receive all employer paid benefits.

**Q 17: If a Non-union Contractor provides their own health and retirement program and pays into it, don't they have to pay twice for these benefits under a Project Labor Agreement?**

**Response:**

No. Under a Project Labor Agreement the Non-union Contractor can continue with his/her own coverage plans for his/her employees at their discretion but the contributions required in the various Master Labor Agreements must be sent directly to the Union Trust Fund.

**Q 18: Without a Project Labor Agreement, are Non-union Contractors required to provide their own health and retirement programs to their employees? If not, how would these employees get health and retirement coverage?**

**Response:**

No. Without a Project Labor Agreement, Non-union Contractors who do not offer retirement and health programs can pay their employees the total prevailing wage in cash which includes amounts for employee benefits such as retirement and health. In this case, non-union employees have the choice of purchasing their own retirement and health care benefits.



## Chapter 17

### PROJECT LABOR AGREEMENTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS

Sections:

- 7-17.01 Findings.
- 7-17.02 Definitions.
- 7-17.03 Application of project labor agreement policy.
- 7-17.04 Required provisions.
- 7-17.05 Compliance with State and Federal law.

#### **7-17.01 Findings.**

City-funded construction projects can involve numerous contractors and employees in different trades, have critical timelines for completion, and require a skilled and properly trained workforce to successfully complete the work in a proper and timely manner. In order to avoid costly delays and additional expense to the City, it is essential that construction on such projects proceed without the labor disruptions that can occur on long-term projects both from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a job site.

In the private sector, project labor agreements have been used for years on complex construction projects to achieve satisfactory performance and the economic benefits that result from having a guaranteed source of skilled workers and from avoiding disruptions in work.

In the public sector, project labor agreements have been used successfully by the San Francisco International Airport, the Contra Costa Water District, the Oakland Airport, the Foothill De Anza Community College District, and numerous other public entities in and around the Bay Area for hospitals, reservoirs, wastewater treatments, schools and other complex construction projects. Such agreements have been a major factor in producing quality construction work and projects completed on time, within budget, and without labor strife or disruptions.

Throughout Northern California, and especially in the San Francisco Bay Area, project labor agreements have been used successfully on numerous public and private construction projects, and public entities such as the County of Contra Costa, the Bay Area Rapid Transit District, the Oakland Unified School District, the San Francisco Unified School District, the City of Berkeley, and others, maintain project labor agreement ordinances and policies requiring the use of project labor agreements on their publicly funded construction projects.

It is recognized that unemployment and underemployment of residents of the City of Watsonville has been and continues to be a serious problem. Statistics also indicate that the higher unemployment level in the City of Watsonville correlates to the higher number of families living at or near the poverty line and to a higher crime rate.

As a result, it is the policy of the City of Watsonville to increase the number of employed persons living in the City of Watsonville in an attempt to counteract the grave economic and social ills associated with the higher unemployment levels that exist within the City.

The City Council has determined there is a need to provide City of Watsonville residents with more opportunities to participate in workforce development and pre-apprenticeship programs that include life skills training and job readiness training. Such pre-apprenticeship programs will increase the capacity of Watsonville residents to succeed later in formal apprenticeship programs and hence reduce the unemployment rate and accompanying poverty and crime conditions.

The construction craft jobs that are created by City-funded projects can be used to facilitate the local hire goals embodied in Watsonville's local hire ordinance. The construction crafts that are employed on these projects require a supply of new apprentices to perpetuate the crafts into the future which provide meaningful employment opportunities to individuals seeking to enter the building and construction trades for long-term, well-paid careers in the construction industry.

In addition, large numbers of returning veterans are and will be seeking employment on City-funded construction projects and will be seeking training opportunities for entrance into the construction industry. Such training opportunities are available through the program known as "Helmets to Hardhats," utilization of which program is required in all current project labor agreements.

The City Council has determined that project labor agreements have proven to be a valuable vehicle for accomplishing all of the goals set out above.

Therefore, the City Council of the City of Watsonville has determined that on all competitively bid public works construction projects with a projected construction cost of Six Hundred Thousand and no/100ths (\$600,000.00) Dollars or more, and employing workers in three (3) or more crafts, a project labor agreement should be used for the construction of such projects.

(§ 1, Ord. 1295-13 (CM), eff. November 7, 2013)

### **7-17.02 Definitions.**

For the purposes of this chapter, certain words and phrases used are defined as follows:

- (a) "Project labor agreement" shall mean a prehire collective bargaining agreement with one (1) or more labor organizations that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Title 29, Section 158(f) of the United States Code.
- (b) "Contractor" shall mean a person entering into or performing a public works construction project.
- (c) "Subcontractor" shall mean any person with whom a construction contractor or other subcontractor enters into a contract to perform a portion of any public works construction project.
- (d) "Public works construction project" shall include all site preparation, construction, alteration, demolition, installation, improvement, painting, repair or off-haul work as defined in Labor Code Section 1720.3, paid for in whole or in part by City funds with a projected construction cost of Six Hundred Thousand and no/100ths (\$600,000.00) Dollars or more and employing workers in three (3) or more crafts.
- (e) "Union" shall mean the Monterey/Santa Cruz Building and Construction Trades Council and its affiliated unions and any other unions that become signatory to a project labor agreement governing the construction of a public works construction project.

(§ 1, Ord. 1295-13 (CM), eff. November 7, 2013)

### **7-17.03 Application of project labor agreement policy.**

This chapter shall apply to all public works construction projects unless the existence of a project labor agreement will jeopardize State, Federal or other public funding sources. In all, it shall be set forth in the bid documents for the public works construction project as a condition of the award that the successful bidder, including contractors and subcontractors at all tiers, shall be required to sign an agreement to be bound and to enter into a project labor agreement. The successful general contract bidder shall execute a master project labor agreement which will be filed with the City Clerk and shall govern its work on the construction of the public works construction project according to its terms.

(§ 1, Ord. 1295-13 (CM), eff. November 7, 2013)

#### **7-17.04 Required provisions.**

Unless the Council, by majority vote, determines otherwise, the project labor agreement shall contain the following provisions:

- (a) The project labor agreement shall be binding on all contractors and subcontractors at all tiers;
- (b) The contractor shall require all subcontractors, at all tiers, as a condition of working on the public works construction project, to become parties to the project labor agreement;
- (c) The project labor agreement shall guarantee against work stoppages, strikes, lockouts, and similar disruptions of the project as set forth in subdivision (a)(4) of California Public Contract Code Section 2500;
- (d) The Union and its members shall continue work on the public works construction project despite the expiration of the applicable collective bargaining agreements;
- (e) All contractors and subcontractors shall recognize the union as the exclusive bargaining representative of the craft workers employed on the public works construction project;
- (f) All contractors and subcontractors shall use the union hiring hall procedures for satisfying project craft needs on the public works construction project;
- (g) All contractors and subcontractors shall hire apprentices indentured in the State-approved joint apprenticeship program for the craft or trade involved for work on the public works construction project in accordance with the apprentice ratios in California Labor Code Section 1777.5;
- (h) Any local hire ordinance adopted by the City of Watsonville shall be included in and made a part of the project labor agreement;
- (i) The project labor agreement shall require use of the "Helmets to Hardhats" program to assist returning veterans in obtaining employment and training opportunities on the public works construction project;
- (j) The wages and benefits of the craft employees performing work on the public works construction project shall be governed by the collective bargaining agreement of the union traditionally recognized as the bargaining representative of the craft(s) in question;
- (k) The project labor agreement shall not apply to the contractors' or subcontractors' parent companies, subsidiaries, or affiliates;
- (l) The project labor agreement shall not apply to the contractors' or subcontractors' managerial, executive, clerical or supervisory employees above the level of general foremen;
- (m) The contractors or subcontractors are acting on their own behalf and have no authority, express, implied, actual, apparent, or ostensible, to bind the City;
- (n) The project labor agreement does not apply to any work performed on or near or leading to or into the public works construction project site by Federal, State, or other governmental entities or their contractor(s) for work which is not part of the public works construction project;
- (o) An agreed-upon protocol concerning drug testing for workers who will be employed on the project as set forth in subdivision (a)(3) of California Public Contract Code Section 2500;
- (p) Prohibition of discrimination based on race, national origin, religion, sexual orientation, political affiliation or membership in a labor organization in hiring or dispatching workers for the project as set forth in subdivision (a)(1) of California Public Contract Code Section 2500;

(q) All contractors and subcontractors may bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements as set forth in subdivision (a)(2) of California Public Contract Code Section 2500;

(r) A requirement that disputes arising from the project labor agreement shall be resolved by a neutral arbitrator as required by subdivision (a)(5) of California Public Contract Code Section 2500.

(§ 1, Ord. 1295-13 (CM), eff. November 7, 2013)

#### **7-17.05 Compliance with State and Federal law.**

This chapter shall be enforced only to the extent that it is consistent with the laws of the State of California and the United States. Nothing in this chapter is intended to exempt any business from complying with State or Federal law, or from complying with State requirements for apprenticeship programs. No employer shall be required to violate its obligations under an agreement governed by the National Labor Relations Act and the Labor-Management Relations Act of 1947. If any provision of this chapter is held by a court of law to be in conflict with State or Federal law, the applicable law shall prevail over the terms of this chapter, and the conflicting provisions of this chapter shall not be enforceable.

(§ 1, Ord. 1295-13 (CM), eff. November 7, 2013)

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**The Watsonville Municipal Code is current through Ordinance 1307-14 (CM), passed July 1, 2014.**

Disclaimer: The City Clerk's Office has the official version of the Watsonville Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.